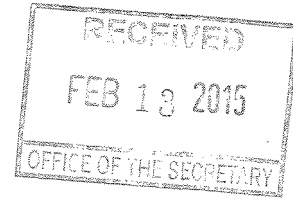


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16223



In the Matter of

**SANDS BROTHERS ASSET
MANAGEMENT, LLC, STEVEN
SANDS, MARTIN SANDS AND
CHRISTOPHER KELLY,**

Respondents.

**DECLARATION OF JANNA I. BERKE
IN SUPPORT OF THE DIVISION OF ENFORCEMENT'S
OPPOSITION TO CHRISTOPHER KELLY'S
MOTION FOR SUMMARY DISPOSITION**

I, Janna I. Berke, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am Counsel in the Division of Enforcement (the "Division"). I submit this declaration in support of the Division's Opposition to Christopher Kelly's Motion for Summary Disposition. I am fully familiar with the facts and circumstances herein.
2. Appended hereto as Exhibit A is a true and correct copy of relevant pages of the transcript of investigative testimony given by Richard Slavin on October 20, 2014.
3. Appended hereto as Exhibit B is a true and correct copy of a document production inventory produced to the Division by Richard Slavin, bearing bates numbers SEC-NY-000002214-15.

4. Appended hereto as Exhibit C is a true and correct copy of a 2009 Analysis of Compliance System of Sands Brothers Asset Management, LLC, produced to the Division by Richard Slavin, bearing bates numbers SB 000002-10.

5. Appended hereto as Exhibit D is a true and correct copy of a cover letter from Richard Slavin to Ralph Lambiase at the Connecticut Banking Department, dated June 7, 2010, produced to the Division by Richard Slavin, bearing the bates number SB 000221.

6. Appended hereto as Exhibit E is a true and correct copy of a June 2010 Analysis of Compliance System of Sands Brothers Asset Management, LLC, produced to the Division by Richard Slavin, bearing bates numbers SB 000222-31.

7. Appended hereto as Exhibit F is a true and correct copy of a cover letter from Richard Slavin to Ralph Lambiase at the Connecticut Banking Department, dated December 7, 2010, produced to the Division by Richard Slavin, bearing the bates number SB 000242.

8. Appended hereto as Exhibit G is a true and correct copy of a December 2010 Analysis of Compliance System of Sands Brothers Asset Management, LLC, produced to the Division by Richard Slavin, bearing bates numbers SB 000243-55.

9. Appended hereto as Exhibit H is a true and correct copy of a cover letter from Richard Slavin to Eric Wilder at the Connecticut Banking Department, dated December 7, 2011, produced to the Division by Richard Slavin, bearing the bates number SB 000576.

10. Appended hereto as Exhibit I is a true and correct copy of a December 2011 Analysis of Compliance System of Sands Brothers Asset Management, LLC, produced to the Division by Richard Slavin, bearing bates numbers SB 000577-590.

11. Appended hereto as Exhibit J is a true and correct copy of the SEC's Division of Investment Management's Staff Responses to Questions About the Custody Rule, updated as of

September 1, 2013, and obtained from the SEC's website at

http://www.sec.gov/divisions/investment/custody_fa_030510.htm on January 26, 2015.

12. Appended hereto as Exhibit K are true and correct copies of emails reflecting the existence of, or relating to, issues that arose with the portfolio company O2HR, LLC after the April 30 deadline for the Fiscal Years 2010-2012, produced by the auditors for the Sands Brother's Asset Management, LLC ("SBAM") managed funds, Cornick Garber & Sandler ("CGS"), bearing the bates numbers SEC-NY8127-000080070-71, SEC-NY8127-000127246-47, SEC-NY8127-000089950, SEC-NY8127-000098610-12 and SEC-NY8127-000098580.

13. Appended hereto as Exhibit L are true and correct copies of emails reflecting the existence of, or relating to, issues that arose with the portfolio company Progressive Capital Solutions, LLC after the April 30 deadline for the Fiscal Years 2011-2012, produced by CGS, bearing the bates numbers SEC-NY8127-000134103-04, SEC-NY8127-000129966-67, SEC-NY8127-000098610-12, SEC-NY8127-000098603 and SEC-NY8127-000098580.

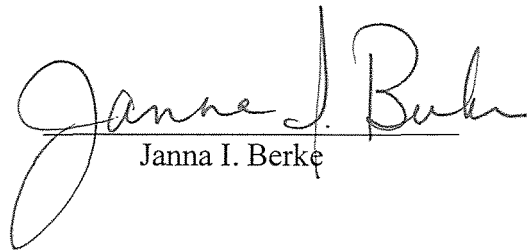
14. Appended hereto as Exhibit M are true and correct copies of emails reflecting the existence of, or relating to, issues that arose with the portfolio company Trinity Cable, LLC after the April 30 deadline for the Fiscal Years 2011-2012, produced by CGS, bearing the bates numbers SEC-NY8127-000087490-94, SEC-NY8127-000087435-40, SEC-NY8127-000097925-27, and its attachment at SEC-NY8127-000097928-32.

15. Appended hereto as Exhibit N are true and correct copies of emails reflecting the existence of, or relating to, issues that arose with the portfolio company M&D Fragrances & Cosmetics, Inc. after the April 30 deadline for the Fiscal Years 2011-2012, produced by CGS, bearing the bates numbers SEC-NY8127-000134059-61, SEC-NY8127-000087454, and SEC-NY8127-000098603.

16. Appended hereto as Exhibit O is a true and correct copy of the transcript of a telephonic prehearing conference held in the above-captioned matter on December 2, 2014.

17. Appended hereto as Exhibit P are true and correct copies of: (1) relevant pages of the transcript of investigative testimony given by Christopher Kelly on April 22, 2013, reflecting the introduction of Exhibit 1, the SEC's Supplemental Information for Persons Requested to Supply Information Voluntarily or Directed to Supply Information Pursuant to a Commission Subpoena ("Form 1662"), and Exhibit 1, and; (2) a cover letter and subpoena dated April 2, 2013, requiring Kelly to appear for investigative testimony, also attaching a Form 1662.

Executed on February 12, 2015
New York, NY



Janna I. Berke

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1 Division until April 1983. After that job I spent eleven
 2 months with a firm called Barth Richeimer Marvin Smith
 3 Friedman & Skolnick which is a real estate syndicator. I
 4 then went to Cohn & Wolfe P.C. where I've been ever since.
 5 Q Did you go to Cohn & Wolfe as a partner?
 6 A No. I went to Cohn & Wolfe P.C. as an
 7 associate, became a partner in 1989.
 8 Q Do you hold any special positions with the
 9 firm?
 10 A It depends on what you call special. I'm the
 11 manager of the -- I'm sorry, I misspoke, I'm the managing
 12 partner of the Westport office. I have been a retiring
 13 chair of various committees, Marketing Committee,
 14 Recruitment Committee, I'm the chair of the Securities
 15 Practice Group.
 16 Q Do you consider yourself to specialize in one
 17 area of law?
 18 A Yes. I do.
 19 Q What is that?
 20 A Securities practice.
 21 Q Do you hold any securities licenses?
 22 A No.
 23 Q Have you ever heard of a firm called Sands
 24 Brothers Asset Management LLC?
 25 A Yes.

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1 Q What is that?
 2 A It's an investment advisor.
 3 Q Now you served as an independent consultant to
 4 Sands Brothers Asset Management LLC pursuant to an order
 5 entered by the Connecticut Banking Department. Is that
 6 correct?
 7 A Yes.
 8 Q Have you ever served in a similar capacity in
 9 the past?
 10 A Yes.
 11 Q To other entities?
 12 A Yes.
 13 Q How many times?
 14 A I don't know.
 15 Q Can you give me a ballpark.
 16 A Three or five times.
 17 Q What was the nature of those engagements?
 18 A Same as with Sands Brothers Asset Management,
 19 it was a function of an order issued by the Banking
 20 Commission.
 21 Q Of Connecticut?
 22 A Yes.
 23 Q Were any of those other engagements to
 24 investment advisors?
 25 A I don't remember.

Page 11

1 Q As a point of clarification for the record, I
 2 may refer to Sands Brothers Asset Management as SBAM
 3 today. If that will confuse you, let me know. Okay?
 4 A As long as you let me refer to it as SBAM.
 5 Q SBAM, okay, that's fine.
 6 A I may do that, the same as you.
 7 Q Are you familiar with the Investment Advisors
 8 Act of 1940?
 9 A Familiar is a relative term, I have knowledge
 10 of it.
 11 Q Have you ever advised clients on the Advisors
 12 Act in the past?
 13 A Yes.
 14 Q Generally or regarding any provisions in
 15 particular?
 16 A Generally.
 17 Q Do you know Martin or Steven Sands?
 18 A Yes.
 19 Q Have you ever met them in person before?
 20 A Yes.
 21 Q When was the first time you met them?
 22 A I don't know.
 23 Q Was it in connection with your service as an
 24 independent consultant to SBAM?
 25 A No.

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1 Q It was prior to that?
 2 A Yes.
 3 Q Was it in an attorney advisory capacity?
 4 A Yes.
 5 Q When was the first time that you heard of SBAM?
 6 A At the time I was interviewed by Martin Sands.
 7 Q You were interviewed by Martin Sands. Is that
 8 correct?
 9 A Yes.
 10 Q When was that?
 11 A I don't know.
 12 Q Can you give me a ballpark, ten years ago?
 13 A If you want me to guess, I'll guess.
 14 Q Go ahead.
 15 A I think it was prior to 2007.
 16 Q Why were you interviewed by Martin Sands?
 17 A To be engaged as counsel to SBAM.
 18 Q Do you know either Martin or Steven Sands
 19 socially?
 20 A No.
 21 Q And that conversation prior to 2007, were you
 22 engaged as a result of that conversation?
 23 A Yes.
 24 Q Was that the first time you ever did work for
 25 SBAM?

Page 13

1 A Yes.

2 Q What was the nature of that engagement?

3 A It involved representation before the

4 Connecticut Banking Department initially.

5 Q And what was he seeking to have you represent

6 him in connection with? Sorry, strike that. Can you tell

7 me a little bit more about your representation of him in

8 connection with the Connecticut Banking Department.

9 A My recollection is that Martin Sands was an

10 investment advisor representative and the Connecticut

11 Banking Department had registered him as an investment

12 advisor representative. Sands Brothers Asset Management

13 was an SEC registered investment advisor and as a result,

14 Connecticut had regulatory oversight over Martin Sands and

15 had as I recall questions about his activities as an

16 investment advisor representative.

17 Q What were those questions?

18 A I don't remember all of them, it had to do with

19 providing information. Beyond that I don't recall.

20 Q It had to do with Martin Sands providing

21 information to the Connecticut Department of Banking?

22 A That's right.

23 Q And was there -- I'm just trying to figure out,

24 was the Connecticut Department of Banking doing an

25 investigation into Martin Sands?

Page 14

1 A One person's investigation is another person's

2 casual inquiry. I don't know how to characterize it.

3 Q But you were representing him before the

4 Commission, the Connecticut Banking Department?

5 A I was.

6 Q In connection with either that investigation or

7 casual inquiry?

8 A That's correct.

9 Q Now besides that engagement have you ever been

10 retained by SBAM at any other time?

11 A Yes.

12 Q Can you describe those matters for me.

13 A I was engaged as an independent consultant

14 pursuant to an order of the Banking Commissioner.

15 Q Have you been engaged by them at any other time

16 besides this one you described to me?

17 A I was also -- initially I was engaged as an

18 attorney for SBAM, that representation continued through

19 the time I was an independent consultant.

20 Q Is that separate from the one you described

21 before in connection with the inquiries into Martin Sands

22 out of the Connecticut Banking Department?

23 A No.

24 Q That's the same.

25 A The same.

Page 15

1 Q So there are two engagements.

2 A As I recall, there were two engagements.

3 Before you ask the next one, is it possible to get a drink

4 of water?

5 MS. BERKE: We'll go off the record for a

6 moment. We're going to go off the record for a minute at

7 9:53 a.m.

8 (Whereupon, a recess was taken.)

9 MS. BERKE: We are going back on the record,

10 the time is 9:59 a.m.

11 Q I just want to clarify --

12 MS. BERKE: I'd like to confirm that you and I

13 have not had any conversations while we were off the

14 record. Is that correct?

15 THE WITNESS: No substantive conversations.

16 MS. BERKE: No substantive conversations.

17 THE WITNESS: That's correct.

18 MS. BERKE: And we also did not have any

19 substantive conversations about the record. Is that

20 correct?

21 MR. BOLOTIN: That's correct.

22 MS. BERKE: And the same for Nancy.

23 THE WITNESS: That's correct.

24 Q I just want to clarify one part of the record

25 from before we took a break. You were engaged by SBAM

Page 16

1 twice, once in connection with an informal inquiry or

2 investigation into reporting by Martin Sands and once as

3 an independent consultant in connection with the

4 settlement with the Connecticut Department of Banking. Is

5 that correct?

6 A That's correct.

7 Q Are you representing SBAM today?

8 A No.

9 Q Do you know how Martin Sands found you as an

10 attorney?

11 A No. I would have to guess to tell you.

12 Q Do you have a guess?

13 A Yes, if you'd like to hear one.

14 Q I'd like to hear it, sure.

15 A I believe I was referred by another lawyer.

16 Q Which lawyer is that?

17 A I can't tell you for sure, I don't remember.

18 Q Is it someone you worked with at Cohn & Wolfe?

19 A No.

20 Q What leads you to believe you were referred by

21 another attorney? What leads you to guess you were

22 referred by another attorney?

23 A I have a long history of trying to market

24 myself to people around the country and I had some success

25 doing that. I am involved with an ABA state securities

Page 21

1 send it to SBAM?

2 A It might have been a day or two earlier but it

3 was either contemporaneous or just prior.

4 Q I want to direct your attention in Exhibit No.

5 28 to the fourth paragraph down on the first page, the

6 fourth paragraph down starts with "I made two separate

7 visits" and if you look at the second sentence, it says

8 "In addition I have had significant experience with the

9 firm and its operations over the last two years. Part of

10 that experience caused me to become familiar with the

11 facts which engendered the Banking Department

12 investigation of the firm." What did you mean when you

13 said "I've had significant experience with the firm and

14 its operations over the last two years"?

15 A I had represented the firm as its lawyer in the

16 prior two years.

17 Q And is that in connection with the

18 investigation or informal inquiry by the Connecticut

19 Department of Banking into Martin Sands reporting that we

20 discussed earlier?

21 A Yes.

22 Q In that earlier representation you represent

23 SBAM or Martin Sands?

24 A Both I believe.

25 Q Did you represent anyone else in connection

Page 22

1 with that investigation or informal inquiry?

2 A No.

3 Q You also said you had experience with the

4 firm's operations, what did you mean by that?

5 A In order to adequately represent the firm in

6 negotiating an order with the Banking Department, I needed

7 to know what the firm did and "operations" is a general

8 term. I tried to familiarize myself as much as I could

9 with what the firm did.

10 Q What did you do to familiarize yourself with

11 what the firm did?

12 A I read documents.

13 Q What kind of documents did you read?

14 A Offering memoranda, subscription agreements,

15 investor questionnaires, Form ADV, various other required

16 reports, internal documents, brochures. I interviewed

17 Chris Kelly who was the new Compliance officer when I was

18 engaged, I interviewed Martin Sands. I spoke to Steven

19 Sands, this was -- if I recall your question correctly,

20 this was at the time I represented SBAM in the Banking

21 Department investigation.

22 Q Did you do anything other than what you just

23 described to me to familiarize yourself with the firm's

24 operations at the time of your prior engagement?

25 A I hope my description described a lot of

Page 23

1 breathing because that's what I did.

2 Q The second sentence I read to you earlier about

3 the part of your experience that caused you to become

4 familiar with the facts which engendered the Banking

5 Department investigation, what did you mean by that?

6 A What that meant was that not every part of what

7 I did in representing Sands Brothers Asset Management

8 involved familiarizing myself with operations and with the

9 facts which engendered the Banking Department

10 investigation of the firm.

11 Q What facts did you become familiar with that

12 related to the Banking Department investigation of the

13 firm?

14 A Organization, structure, history of SBAM,

15 personnel, documents that were produced for production to

16 regulatory agencies. Beyond that I would only be

17 guessing.

18 Q We touched on this briefly before but what

19 exactly did you understand the Banking Department's

20 investigation to be?

21 A I'd have to go back and look, I can't tell you

22 with absolute certainty beyond what I've told you before,

23 that's what I remember.

24 Q How big was SBAM at the time you served as the

25 independent consultant?

Page 24

1 A Big.

2 Q How many employees, not how many square feet?

3 A You got why I was looking at your question.

4 There didn't seem to be too many employees, I know I

5 recited all the employees in the compliance reports but it

6 was -- I think it was under twenty.

7 Q How many offices did they have?

8 A Two as I recall.

9 Q Where were those offices?

10 A One in Greenwich, Connecticut and one in

11 Manhattan.

12 Q Did you ever visit the Manhattan office?

13 A No.

14 Q Why not?

15 A Documents that I needed were sent to me from

16 the Manhattan office, I talked to people in the Manhattan

17 office, I interviewed them. I felt I understood what was

18 happening there, it was not the operations office of the

19 firm as far as I can tell.

20 Q What does that mean, it was not the operations

21 office?

22 A It basically was an office where Steven Sands

23 sat, the Compliance staff and the portfolio managers

24 essentially sat in Greenwich.

25 Q Were there other employees besides Steven Sands

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1 order, determined that what was being complained about in
 2 the order was beyond the scope of my engagement as it all
 3 had occurred prior to that time and while I noticed
 4 specifically the requirement to send the compliance report
 5 that I prepared to the SEC as part of this order, I didn't
 6 know that initially by reading this order, I knew it
 7 because I was asked to do it by Chris Kelly.
 8 Q Do you recall any other conversations with Mr.
 9 Kelly about this order?
 10 A I don't recall any others, no.
 11 Q Do you recall -- so in the conversation you
 12 just described, you recall Mr. Kelly telling you that he
 13 was going to comply with the order. Do you recall any
 14 subsequent conversations about whether SBAM was in
 15 compliance with the order?
 16 A It was a cease and desist order. As I sit here
 17 today, I think that conversation was have you complied
 18 with it if it was already issued.
 19 Q Do you recall conversations where you said have
 20 you complied with the order?
 21 A Well I don't recall this specific language of
 22 the conversation but my sense is a cease and desist order
 23 has been issued, it means stop, so I asked has the bad
 24 behavior stopped.
 25 Q And what was Mr. Kelly's answer?

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1 A Yes.
 2 BY MS. BROWN:
 3 Q Can I just followup on that. Was it your view
 4 that the order imposed no ongoing obligations on SBAM?
 5 A I don't think I said that. There were clearly
 6 ongoing obligations, there were undertakings in the order.
 7 The most important to me was the filing of the compliance
 8 report but there's a fine imposed, certainly they had to
 9 do that and the implication that the order is -- whatever
 10 wrongdoing that occurred before shouldn't be happening
 11 going forward. There was a question about audit and
 12 certainly if they have custody, it's not the most clear
 13 rule in the world but certainly there's an obligation
 14 created.
 15 Q So I think that's what we're interested in
 16 understanding, the conversations you had with Mr. Kelly
 17 about that, their ongoing attempt to comply with the
 18 custody rule.
 19 A My conversation was, if I can remember it
 20 correctly, in the context of the same conversation I'm
 21 talking to you about you're starting to refresh my
 22 recollection but I believe I asked a question to the
 23 effect of are you doing the audit that the rule requires
 24 if you have custody and I don't recall the answer to that
 25 one. There may have been -- they may have taken the

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1 position that they weren't required to do that because I
 2 guess there's certainly a sliding scale, you qualify or
 3 you don't qualify. So my sense is that I don't know what
 4 the firm's position was at the time that I had that
 5 conversation other than reiterating I have to do a report
 6 and I have to talk about any violations of compliance and
 7 I think I was assured that they didn't believe they were
 8 in violation of this order through Mr. Kelly. I don't
 9 recall having a conversation with anyone else at SBAM
 10 about the order.
 11 Q When you said that you were assured that they
 12 didn't believe they were in violation of the order, is it
 13 fair to say that Mr. Kelly also assured you that he didn't
 14 believe they were in violation of the custody rule?
 15 A That's way beyond my recollection of the
 16 specifics of the conversation but my sense is that the
 17 audit requirement certainly required an understanding of
 18 what the custody rule was and whether an audit was going
 19 to be imposed on that firm. I recall nothing about
 20 whether the audit requirement was going to be complied
 21 with or not other than I think that I asked about do you
 22 have an auditor, are they going to be doing the audit and
 23 I don't recall an answer to that question but my sense is
 24 if that was -- if I got a positive answer to that question
 25 I would have written it in the report.

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1 Q Positive in what way?
 2 A We have custody, therefore we're doing the
 3 audit as required by the SEC order. I don't recall I got
 4 that answer. I may have gotten we don't have custody and
 5 we're not going to do that audit. I just don't recall.
 6 BY MS. BERKE:
 7 Q Did Mr. Kelly ever tell you or ever express any
 8 confusion about what SBAM's responsibilities were under
 9 the order?
 10 A I don't remember.
 11 Q Did anyone, either Mr. Kelly or Martin or
 12 Steven Sands, ever express confusion about what their
 13 responsibilities were under the order?
 14 A I don't think I had a conversation with Martin
 15 or Steven Sands about the SEC order.
 16 BY MS. BROWN:
 17 Q If Mr. Kelly had expressed some confusion,
 18 would that have been something you would have put in your
 19 report?
 20 A I suspect I would but that's really conjecture.
 21 As we sit here, I don't know. I didn't represent this
 22 company in connection with the SEC, any investigation by
 23 the SEC.
 24 Q Well if Mr. Sands -- either Mr. Martin Sands or
 25 Mr. Steven Sands or Chris Kelly had expressed confusion

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1 2010 analysis to the compliance system" and it appears to
 2 have been produced directly after a cover letter to DTD
 3 dated December 7, 2010. Does that help you figure out
 4 what this document is?
 5 A No.
 6 Q If I gave you the cover letter dated December
 7 7, 2010, would that help?
 8 A This is not a document I submitted to the
 9 Banking Department. This is a document that has a lot of
 10 handwritten notes on it, I believe it's a document that I
 11 used in preparing the following exam that I wrote.
 12 Q Is it possible that you took the report that
 13 you had submitted to the Connecticut Banking Department
 14 and then used it in the following year's examination?
 15 A Yes.
 16 Q So do you believe that the text that is typed
 17 here is representative of what you've submitted to the
 18 Connecticut Department of Banking?
 19 A At some point in time, I believe that's true.
 20 Q Do you have any reason to believe that it
 21 wasn't what was submitted in December 2010?
 22 A If it were dated I would have more confidence
 23 in telling you when I submitted it. I'm sorry I can't be
 24 more definitive, that's as much as I can tell.
 25 Q Well does this comport with your recollection

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1 of what you did in 2010, in December 2010 in connection
 2 with your compliance analysis? So for example in the
 3 second paragraph you say "To prepare this report I
 4 reviewed the firm's compliance manual which was revised as
 5 of November 15, 2009, I interviewed SBAM's chief
 6 compliance officer and chief operating officer. The firm
 7 has recently consolidated its space, so it was an easy
 8 task to observe its operations while interviewing Chris
 9 Kelly." I mean does this sound like what you did in 2010
 10 to perform your analysis?
 11 A I don't know when the consolidation of the
 12 office took place. Which one are you reading from, I'm
 13 sorry, which exhibit?
 14 Q 243. I'm reading from Exhibit No. 33.
 15 A My sense is they had that consolidation for two
 16 of my exams, so whichever one was the next to the last, it
 17 could have been this exam. You know how I did it, I had a
 18 cover letter and then I sent in the report. Unfortunately
 19 they don't match.
 20 Q When you say the consolidation of space, what
 21 are you referring to?
 22 A The office building that SBAM occupies I
 23 believe is owned by an affiliate of SBAM and Chris Kelly
 24 had an office that was separated from the main area where
 25 the portfolio managers were and where the executive

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1 assistant was and where the accounting people were.
 2 Apparently the space got rented that Kelly was in, they
 3 moved him over to the same area for lack of a better term,
 4 it was like a bullpen and they were all together. At
 5 least the last two years of my onsite exams were done in
 6 that room where after Kelly had moved over, so I called
 7 that a consolidation of space.
 8 Q Okay.
 9 A From a compliance standpoint it probably was a
 10 better setup.
 11 Q Can you turn to page 4 which bears the bates
 12 number SB-246. Under bullet 8 it says "SBAM takes the
 13 position that it has custody of its clients assets as it
 14 has custody of some securities, however it is not subject
 15 to the SEC's surprise audit rule for brokers with custody,
 16 it provides monthly reports to its fund investors as well
 17 as sending its audits to them. The audits are done by a
 18 PCAOB accountants." How did you determine that SBAM takes
 19 the position that it has custody of its clients assets?
 20 A My best recollection is that Chris Kelly told
 21 me.
 22 Q Do you remember exactly what he told you?
 23 A Beyond what it says here, no.
 24 Q Do you remember when you had that conversation
 25 with Mr. Kelly?

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1 A Prior to completing the examination whichever
 2 examination it was, whichever one this is an exhibit of.
 3 Q Did you do anything to independently determine
 4 whether or not SBAM had custody of its clients assets?
 5 A I thought that was beyond the scope of my
 6 engagement. I did -- to actually do accounting work but I
 7 did ask questions to try to satisfy myself whether SBAM
 8 had custody or not. I asked him why he thought they had
 9 custody.
 10 Q What did he say?
 11 A I believe it was something to the effect that
 12 the SEC thinks we do and we don't want to do it wrong
 13 based on the SEC's determination but we don't think we're
 14 subject to the surprise audit.
 15 Q So Chris Kelly told you he did not think that
 16 SBAM was subject to the SEC surprise audit?
 17 A Yes.
 18 Q Did he tell you why he thought that?
 19 A Yes.
 20 Q Why? What did he tell you why he thought that?
 21 A I don't remember.
 22 Q You wrote that "It provides audits to fund
 23 investors." Who told you that?
 24 A I wrote "It provides monthly reports to fund
 25 investors," not audits.

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1 Q Keep going.
 2 A "As well as sending its audits to them." Who
 3 told me that?
 4 Q Yes.
 5 A I saw monthly reports and he told me they send
 6 audits.
 7 Q Chris Kelly told you they send audits to fund
 8 investors.
 9 A Yes.
 10 Q Did you ever see the fund audits?
 11 A That's a good question.
 12 (Laughter)
 13 Q I hit one.
 14 A I can't remember. Generally when Chris Kelly
 15 mentioned a document to me, I asked to see it. I would
 16 only be guessing but my guess based on my typical method
 17 is I asked to see it and I asked him who the PCAOB
 18 accountant was.
 19 Q Did you ever ask him to provide support that it
 20 was -- strike that. Did you ever ask him to provide proof
 21 that it was sending audits to fund investors?
 22 A No.
 23 Q Did you ever ask him when it sent its audits to
 24 fund investors?
 25 A I think I did.

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1 Q What did he say?
 2 A After they were prepared.
 3 Q Did you ever ask him if the mailings to the
 4 investors complied with the custody rule deadline?
 5 A No.
 6 Q Did you ever do anything to independently
 7 verify that SBAM was not required to comply with the SEC's
 8 surprise audit rule?
 9 A Other than asking him questions about why he
 10 felt they either had -- why they had to comply or didn't
 11 have to comply, that was where I stopped.
 12 Q Can you read the handwritten notes to me that
 13 are written around this paragraph.
 14 A Maybe.
 15 (Laughter)
 16 Q Can you try to read them for me, please.
 17 A Thank you for that. I think the first one is
 18 "get out of surprise audit rule." The second one is
 19 "subject to custody rules."
 20 Q And do you know what those notes reflect?
 21 A Responses to questions I asked Mr. Kelly.
 22 Q Do you recall -- strike that. Do you recall
 23 whether Mr. Kelly ever provided you with comments or
 24 feedback about this language that we've been discussing
 25 that's in paragraph 8 on page 4?

Page 99

1 A I don't remember that he did, it's possible, I
 2 don't remember.
 3 Q Do you recall ever discussing this language
 4 with Martin Sands or Steven Sands?
 5 A I don't recall that at all.
 6 Q I apologize if I've asked this already but do
 7 you recall how many times you spoke to Martin Sands in
 8 connection with your reviews?
 9 A I don't think you asked me that one. I don't
 10 remember how many times.
 11 Q Ballpark?
 12 A Three would be my guess.
 13 Q Were each of those in person?
 14 A Yes.
 15 Q Never by phone?
 16 A Never by phone.
 17 Q Did you ever correspond with Martin Sands by
 18 e-mail?
 19 A If I did, it may have been once, it was not
 20 their habit to use e-mail, either Martin or Steven Sands.
 21 Q Did you discuss the fact that it wasn't their
 22 habit to use e-mail with them?
 23 A Yes.
 24 Q What did you say to them?
 25 A I said "sometimes I have to communicate with

Page 100

1 you in a quick fashion," they wanted me to use fax, so we
 2 did.
 3 Q Did you ever send them faxes?
 4 A Yes.
 5 Q How many?
 6 A I can't tell you.
 7 Q Did you save those faxes?
 8 A Whatever faxes I saved would have been produced
 9 to you I suspect if they had anything to do with
 10 compliance review. If they had anything to do with
 11 anything else, I don't know, I didn't review anything
 12 else.
 13 Q Did you check your e-mails before you produced
 14 documents to the SEC?
 15 A I don't remember.
 16 Q The conversations you had with Martin Sands,
 17 the ballpark three conversations, were they spread out?
 18 In other words were all three conversations in connection
 19 with one analysis or did you speak with him at different
 20 times in connection with different analyses?
 21 A Three different times.
 22 Q Three different analyses?
 23 A Yes.
 24 Q How many times did you speak to Steven Sands?
 25 A None about the compliance -- no, that's not

25 (Pages 97 to 100)

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1 updated periodically but the scope of my exam stayed the
 2 same.
 3 Q When you wrote "No additional inquiry was made
 4 after the initial one," what was the basis for saying
 5 that?
 6 A That's what I was told.
 7 Q By Mr. Kelly?
 8 A Yes.
 9 Q And you wrote "The firm has provided the SEC
 10 with the requested information," what was the basis for
 11 saying that?
 12 A He told me.
 13 Q Mr. Kelly?
 14 A Yes.
 15 Q And you never looked at the information that
 16 was provided to the SEC, did you?
 17 A I did not.
 18 Q I'm going to jump down to Specific
 19 Recommendations at the bottom. I'll read the first
 20 sentence, "Given the periodic review of the compliance
 21 manual to keep it current, the small size of the firm, a
 22 few employees and the ability of the chief compliance
 23 officer to review each transaction and to speak to each
 24 employee of the firm immediately, the compliance system as
 25 a firm functions well, it is uniquely dependent on the

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1 skills of the chief compliance officer." If you had any
 2 concerns about the skills of Mr. Kelly, you would have
 3 stated that in your report. Is that correct?
 4 A I certainly wouldn't have made that statement.
 5 Yes, I would have stated it in the report.
 6 Q And if you had concerns about the skills of Mr.
 7 Kelly, you would not have concluded that the compliance
 8 system as a firm functions well. Is that correct?
 9 A That's correct.
 10 Q Jumping ahead to the next page, the very last
 11 sentence in the report says "It appears that the revised
 12 compliance manual, the existing chief compliance officer
 13 and the increased scrutiny given to compliance seems
 14 sufficient to prevent further concerns." If you had heard
 15 any complaints from Mr. Kelly about an inability to do his
 16 job, would you have written that?
 17 A It depends on what his complaint was.
 18 Q If it was about his ability to comply with
 19 federal rules and regulations, would you have written
 20 that?
 21 A Yes, if I heard that.
 22 Q You would have written that sentence?
 23 A I'll make it easier.
 24 Q I think I turned it around.
 25 MR. BOLOTIN: You did turn around the

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1 question.
 2 A If Chris Kelly had complained to me about the
 3 ability to do his job, I would have mentioned it in the
 4 review, that would seem to be a violation of lots of parts
 5 of the compliance manual.
 6 Q And if you had any concerns about the support
 7 Mr. Kelly was getting from the Sands Brothers in
 8 connection with his ability -- with SBAM's ability to
 9 comply with federal rules and regulations, would you have
 10 reached that conclusion?
 11 A If I heard that, I would have. If I heard that
 12 there was a problem with his doing his compliance job, I
 13 would have definitely mentioned that.
 14 Q Did you speak to Mr. Kelly in advance of your
 15 testimony today?
 16 A No.
 17 Q When is the last time you spoke to Mr. Kelly?
 18 A Shortly after the preparation of this
 19 examination, of the last one we looked at.
 20 Q How about Martin Sands, did you speak with him
 21 before today?
 22 A No.
 23 Q When is the last time you spoke to Mr. Sands,
 24 Mr. Martin Sands?
 25 A Sometime prior to the last time I spoke to Mr.

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1 Kelly.
 2 Q And what about Steven Sands, when is the last
 3 time you spoke with Steven Sands?
 4 A Also sometime prior to the time I spoke to Mr.
 5 Kelly, the last time I spoke with Mr. Kelly.
 6 BY MS. BROWN:
 7 Q Have you had any -- have you reached out to any
 8 of those individuals, Chris Kelly, Martin Sands, Steven
 9 Sands, in connection with the subpoena you received for
 10 documents from us?
 11 A I informed them that I got a subpoena.
 12 Q How did you do that?
 13 A A written communication, I can't tell you
 14 whether it's a letter or an e-mail.
 15 Q I'm not trying to challenge your prior
 16 testimony but I think you told us that the Sands brothers
 17 themselves don't communicate by e-mail. Does that refresh
 18 your recollection about how you might have communicated
 19 the receipt of the subpoena?
 20 A I don't think I wrote to the Sands brothers, I
 21 probably wrote to Chris Kelly.
 22 Q Just to Chris Kelly, okay. Did you receive a
 23 response from anyone?
 24 A No. I think the answer is no.
 25 Q Any other communications with anyone

U.S. SECURITIES AND EXCHANGE COMMISSION

SUBPOENA DATED FEBRUARY 26, 2013

IN THE MATTER OF SANDS BROTHERS ASSET MANAGEMENT, LLC
VENTURE CAPITAL FUNDS (NY-08127)

DOCUMENT PRODUCTION INVENTORY

COVER LETTER DTD 12/7/09	000001
2009 ANALYSIS OF COMPLIANCE SYSTEM	000002-000010
2009 DRAFT ANALYSIS OF COMPLIANCE SYSTEM	000011-000019
INVESTMENTS	000020
ANNUAL ACKNOWLEDGEMENT & AGREEMENT	000021-000022
ANNUAL ACKNOWLEDGEMENT & AGREEMENT	000023-000024
ANNUAL ACKNOWLEDGEMENT & AGREEMENT	000025-000026
ANNUAL ACKNOWLEDGEMENT & AGREEMENT	000027-000028
ANNUAL ACKNOWLEDGEMENT & AGREEMENT	000029-000030
ANNUAL ACKNOWLEDGEMENT & AGREEMENT	000031-000032
ANNUAL ACKNOWLEDGEMENT & AGREEMENT	000033-000034
ANNUAL ACKNOWLEDGEMENT & AGREEMENT	000035-000036
ACCESS PERSONS LOG	000037
FORM ADV 7/11/2011	000038-000106
SBAM BROCHURE	000107-000152
SBAM COMPLIANCE MANUAL	000153-000220
COVER LETTER DTD 6/7/10	000221
2010 ANALYSIS OF COMPLIANCE SYSTEM	000222-000231
COVER LETTER DTD 12/13/2010	000232
2010 ANALYSIS OF COMPLIANCE SYSTEM	000233-000241
COVER LETTER DTD 12/7/2010	000242
2010 ANALYSIS TO COMPLIANCE SYSTEM	000243-000255
OUTLINE FOR COMPLIANCE REVIEW	000256-000261
OUTLINE FOR COMPLIANCE REVIEW 2009 MANUAL	000262-000268
LITIGATION REPORT OF SBAM	000269
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ATTORNEY NOTES 12/1/10	000271
INVESTMENTS	000272
INVESTMENT ADVISORY AGREEMENT (GENESIS)	000273-000279
SELLING AGREEMENT (AAIMS)	000280-000304
INVESTMENT ADVISORY AGREEMENT (BRIDGE)	000305-000313
SELLING AGREEMENT (LANE)	000314-000320
ACCESS PERSONS LOG	000321
LITIGATION REPORT OF SBAM	000322-000323
ANNUAL ACKNOWLEDGEMENT & AGREEMENT	000324-000325

ANNUAL ACKNOWLEDGEMENT & AGREEMENT	000326-000327
ANNUAL ACKNOWLEDGEMENT & AGREEMENT	000328-000329
ANNUAL ACKNOWLEDGEMENT & AGREEMENT	000330-000331
ANNUAL ACKNOWLEDGEMENT & AGREEMENT	000332-000333
ANNUAL ACKNOWLEDGEMENT & AGREEMENT	000334-000335
ANNUAL ACKNOWLEDGEMENT & AGREEMENT	000336-000337
FORM ADV 6/2/2010	000338-000389
ACKNOWLEDGEMENT & AGREEMENT	000390-000391
BROKERAGE ACCOUNT DISCLOSURE FORM	000392
SEXUAL HARASSMENT POLICY & PROCEDURE	000393
SBAM INTERNAL MEMO RE SEXUAL HARASSMENT POLICY	000394-000409
GENESIS SUBSCRIPTION AGREEMENT	000410-000441
GENESIS LIMITED PARTNERSHIP AGREEMENT	000442-000494
GENESIS SUBSCRIPTION DOCUMENTS	000495-000541
VANTAGE POINT SUBSCRIPTION DOCUMENTS	000542-000575
COVER LETTER DTD 12/7/2011	000576
2011 ANALYSIS OF COMPLIANCE SYSTEM	000577-000590
FEDEX DELIVERY CONFIRMATION	000591
FEDEX TRACKING INFORMATION	000592-000593
COVER LETTER DTD 12/7/2011	000594
2011 ANALYSIS OF COMPLIANCE SYSTEM	000595-000607
COVER LETTER DTD 12/5/2012	000608
2012 ANALYSIS OF COMPLIANCE SYSTEM	000609-000623
FEDEX DELIVERY RECEIPT	000624
SBAM BROCHURE	000625-000694
SCHLUSSEL SIGNATURE PAGE	000695
GENESIS SUBSCRIPTION AGREEMENT	000696-000753
JOHNSON LETTER TO KELLY DTD 12/21/2011	000754
GENESIS SUBSCRIPTION AGREEMENT	000755-000824
GENESIS 2012 REDEMPTIONS	000825
ACCESS PERSONS LOG	000826
EMAIL JANKOWSKI TO KELLY DTD 3/8/12	000827
EMAIL KELLY TO JANKOWSKI DTD 3/15/12	000828-000829
EMAIL KELLY TO JANKOSKI DTD 3/26/12	000830
LITIGATION REPORT OF SBAM	000831
FORM ADV 11/30/12	000832-000990

ANALYSIS OF COMPLIANCE SYSTEM OF
SANDS BROTHERS ASSET MANAGEMENT, LLC

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(203)-341-5310

I. Introduction

I have been engaged to perform an analysis of the Sands Brothers Asset Management, LLC (the "Firm" or "SBAM") compliance system. This engagement is the result of the September 9, 2009 order of the Banking Commissioner. In that order the Firm agreed to comply with a number of requirements. Among those requirements was the production of an independent consultant's report in connection with the Firm's consulting system.

To prepare this report I reviewed the Firm's Compliance Manual which was revised as of November 15, 2009. I also reviewed the prior Compliance Manual as a source of comparison. In addition I interviewed management, particularly Christopher Kelly, Esq. the Chief Compliance Officer and Chief Operating Officer of the Firm. ("Christopher Kelly") I also spoke with Steven Sands and Martin Sands, principals of the Firm about the nature of the engagement and about various aspects of their responsibilities as detailed in the Compliance manual. In addition I interviewed Theresa Bildt ("Terry Bildt") who is the Executive Assistant at the Firm.

I also interviewed Hugh Marasa, Director of Marketing, as well as other Firm personnel.

I made two separate visits to the Firm to review its operations and to interview its personnel. In addition I have had significant experience with the Firm and its operations over the last two years. Part of that experience caused me to become familiar with the facts which engendered the Banking Department investigation of the Firm. During that process I reviewed Offering Memoranda of the Firm's clients and I became somewhat familiar with how the Firm advised its clients.

II. Structure of the Firm and the Firm's Clients

The Firm has been a federally registered investment adviser since 1999. The Firm has no individual clients. SBAM advises a group of funds of hedge funds (the "Select Access Funds"), two asset-based lending funds (the Genesis Funds), a group of venture capital funds (the "Venture Funds") and a distressed securities fund (the "Vantage Point Fund" and, together with the Select Access Funds, the Genesis Funds, and the Venture Funds, the "Funds").

SB 000002

SEC-NY8127-000002217

1. The Select Asset Funds

The Select Asset Funds are a group of multi-strategy funds of hedge funds. The Select Asset Funds invest with a carefully selected group of hedge fund managers throughout the hedge fund industry. Individual investors in the Select Access Funds have the benefit of management at two levels, selection and monitoring of managers by SBAM and the actual management of funds by the individually selected fund managers. SBAM tracks the performance of a broad group of managers and then selects managers and allocates funds to maximize risk-adjusted performance. These funds are closed to new investors.

The Select Access Funds pay SBAM an annual advisory fee based on net asset value payable in arrears. In addition, affiliates of SBAM which are member-managers of each of the Select Access Funds may receive an annual performance allocation, subject to the performance of the funds. The executive officers of SBAM also serve as the managers of the entities which are the member-managers.

The Select Access Funds are Select Access LLC, Select Access (Institutional) LLC, Select Access Offshore, Ltd. (substantially all of the assets of Select Access Offshore are invested in Select Access (Institutional LLC), and Select Access III LLC.

2. Genesis Merchant Partners

SBAM is also investment advisor to Genesis Merchant Partners, LP and Genesis Merchant partners II (the "Genesis Funds"). The objective of the Genesis Funds is to seek consistent returns primarily by making strategic and opportunistic loans, on a secured and unsecured basis, to domestic or foreign borrowers. These borrowers include small and micro-cap public companies, private companies and special purpose real estate and other niche businesses. The focus of the Genesis Funds' investment is on markets which SBAM considers underserved, out of favor, ignored, less than prime, or distressed. The purpose of these types of investments is to generate higher returns than the typical asset backed loan fund. The Genesis Fund is not limited to the types of investments detailed above and may make investments in a broad range of investments at the discretion of SBAM.

The Genesis Funds pay SBAM a monthly management fee based on net asset value and may make an annual performance allocation to the general partner of the Genesis Funds. The general partner is owned by persons considered to be related persons to SBAM.

3. Venture Funds

SBAM advises the Venture Funds which typically make investments in private placements. They may also invest in public companies or in other managed vehicles. The Venture Funds invest in a number of sectors including, but not limited to technology,

SB 000003

health care, business services, finance, and transportation. These funds are currently closed to new investors.

The Venture Funds pay SBAM a quarterly advisory fee based upon assets under management. In addition, affiliates of SBAM which are member-managers of the Venture Funds may receive an annual performance allocation, subject to the performance of the funds. The executive officers of SBAM also serve as the managers of the entities which are the member-managers. The Venture Funds are structured to require long-term investment by investors in those funds.

The Venture Funds are Sands Brothers Venture Capital LLC, Sands Brothers Venture Capital II LLC, Sands Brothers Venture Capital III LLC, Sands Brothers Venture Capital IV LLC, 280 Ventures LLC, Granite Associates LLC, and Katie and Adam Bridge Partners, L.P..

4. Vantage Point Fund

The Vantage Point Fund was organized in 2009 and commenced operations in March 2009. The Vantage Point Fund invests primarily in high yield and distressed debt. The Vantage Point Fund will pay to SBAM a monthly management fee equal to 2% annually, and, subject to performance, will make a 20% annual performance allocation to the general partner of the Vantage Point Fund, which is owned by related persons of SBAM, subject to a high water mark. The Vantage Point Fund will charge an operational fee (in addition to the monthly management fee) equal to the greater of (i) approximately 0.000667% (1/15 of 1% monthly) of the net assets of the Vantage Point Fund or (ii) \$10,416.66 per month (\$125,000 annually).

5. SBAM Personnel

Martin and Steven Sands are the co-founders of the Firm and are the Senior Portfolio Managers. They have ultimate responsibility for the management of the funds which SBAM manages. Christopher Kelly is the Chief Compliance officer and Chief Operating Officer. He is responsible for the Firm's compliance and he is responsible for operations which do not involve investment decision-making.

There are three Portfolio Managers who have more direct responsibility for management of the funds of the Firm's clients. Brian Cloonan manages the Venture Funds, Tim Doede manages the asset based lending funds, and Dan Libby manages the Select funds, which are funds of funds, and he also manages the Vantage Fund which is a distressed fund.

Only the Vantage Point Fund and the Genesis Funds currently take new investors.

Theresa Bildt is the Executive Assistant and Office Manager. She has significant ministerial compliance responsibility. Brian Cloonan is an Analyst who manages the

SB 000004

SEC-NY8127-000002219

Venture Funds. There are two drivers who are employed by the Firm, John Antonetti and Claude Maynard, Sr. In addition Anita Sands, Martin and Steven Sands' mother, is employed as a consultant by the Firm and Hugh Marasa is Director of Marketing. He is a salaried employee whose job is primarily to retain clients. In addition, he discusses investments in other SBAM managed funds with investors in other SBAM funds.

6. Trading

The Firm does little trading for its clients; it has few positions. Trades in the Venture Funds are executed with the registered broker-dealer, Laidlaw & Co. Laidlaw is an affiliate of the Firm based on related ownership. As the Firm's Portfolio Managers are required to secure best execution for its clients, Laidlaw's discounted charges generally make it the selection for these trades. The firm does not trade for the Select Funds or for the Genesis Funds. The Venture Funds have few trades and the Vantage Fund trades in mortgage backed securities through a variety of brokers with expertise in the mortgage-backed securities business.

7. Statements and Subscription Agreements

Depending on the requirements of the individual Offering memorandum, the Firm provides the investors in its client funds reports on a monthly or a quarterly basis. I have attached sample reports to this report. As all of the clients became investors through private offerings of securities in the various Funds, I reviewed a sampling of subscription agreements for completeness and to insure that they existed and are readily available.

III. Compliance Manual

Having been familiar with the Firm prior to the preparation of this report, I was prepared to recommend that it completely revise its Compliance Manual to better reflect its business. When I began the review of the Firm I discovered that the Manual had recently been revised and it is specific to the Firm's current business. The Firm undertook a complete rewrite of the Manual changing its prior generic manual into one that deals with the specific issues facing the Firm on a day-to-day basis.

Given the small staff and comparatively small amount of transactions undertaken by the staff, the Manual has been adapted to reflect the actual amount of compliance personnel with a specific designation of which person is in charge of which operation and who reports to whom.

To test the operations detailed in the Manual I interviewed the personnel detailed above and I required each to describe the compliance procedures used to satisfy each part of the Manual. I also requested from each of those individuals the specific documents or samples of documents, books, and records which satisfy the Manual's requirements.

I describe below the results of the interviews and each of their elements.

A. Emails

I discussed the preservation and retrieval of emails with Christopher Kelly and with Terry Bildt. I also discussed the preparation of emails and the review of their

content. When any investor-related email is prepared to be sent outside of the office it must be prepared in draft and reviewed by Christopher Kelly prior to its distribution.

The Firm uses a third party service provider, Global Relay, as a back up for its primary record of emails. It also provides surveillance of all emails. In the event that emails must be recovered the Firm can retrieve over 150,000 emails within one day. The system does not employ discs so that there is no long search requirement.

In reviewing emails the Firm employs a key word search capability in addition to the actual reading of each email before it is sent. The Firm is small enough and has so few employees that Christopher Kelly is able to review each email personally.

The principals of the firm, Martin and Steven Sands, have adopted a policy of never sending emails. Christopher Kelly has had and continues to have meetings with the staff in connection with the proper preparation of emails and the need to have them approved prior to sending. Terry Bildt functions as an extra layer of compliance review as she drafts many of the emails and performs a review prior to submission to Christopher Kelly. At the May 2008, November 2008 and April 2009 compliance meetings a major topic was avoiding the improper use of emails and the use of improper language in emails.

B. Miscellaneous compliance provisions

a. Personal Trading Policy

I required Christopher Kelly to explain the way in which he reviews trades and how he enforces the policy. In connection with that review he provided the list of access persons at the firm and the requirement of providing current brokerage statements for access persons. ~~His trades are reviewed by Terry Bildt, who has significant prior brokerage firm experience.~~

In connection with the required review of trading I questioned Christopher Kelly about the existing Connecticut Banking Department Order which requires him to review trades by Martin Sands and his family. The procedure involves the trustee of Mr. Sands' family's accounts informing Christopher Kelly of impending trades, a review of the impending trade, and then the completion of a Personal Trading Form.

b. Reports to investors in funds

The Firm prepares a Monthly Fund Review for the Genesis Funds, Select Access Funds, and Vanatage Point Fund. I reviewed a sampling of Monthly Fund Reviews. Christopher Kelly performs a prior review for accuracy before the statements are sent to prevent misstatements or misrepresentations.

c. Preservation and access to compliance documents

All compliance documents are maintained on Christopher Kelly's hard drive. I tested this system to insure that he had instantaneous access to documents which might be requested in an examination or which he might need to refresh his recollection about reviews he performed or other lists or other documents which show compliance with procedures in the Compliance Manual.

SB 000006

SEC-NY8127-00002221

Among documents I requested were subscription agreements for private offerings of securities which Christopher was able to produce immediately. He was also able to produce originally signed documents based on his archiving system. To prevent tampering or unauthorized access to these documents each computer has access codes.

d. Agreements with Placement Agents

I requested copies of the agreements which the Firm had with registered broker-dealers which may sell interests in its Funds. I reviewed existing agreements with Lane Capital Markets and with Alternative Asset Investment Management Securities, with which there has been no activity for more than eighteen months.

e. Restricted List and Market Timing

Christopher Kelly produced the restricted list and we discussed the development of the restrictive list and the way in which a company is placed on the list. Each person in the Firm is trained to discuss public companies with Christopher Kelly. He periodically reminds each Portfolio Manager of that person's responsibility to discuss public companies and the trading in their securities with him. I reviewed the restricted list.

I discussed the prevention of market timing and discovered that it is easy to prevent at the Firm because it is so small and because there are so few trades executed. Each trade must be reviewed by Christopher Kelly before it is executed. Unlike most compliance officers, Christopher Kelly is not required to "test" for market timing, he reviews every trade and can determine what is involved.

f. Overall Supervision

Unlike most firms the Chief Compliance Officer sees or speaks with every employee of the Firm every day. He literally looks at every transaction the Firm undertakes and he looks at all of the Firm's business. He looks at every trade. He has the ability to inspect all of the Firm's activities with a view toward identifying any negatives.

C. Testing the Compliance Manual, its procedures, and its effectiveness

I discussed the following Manual topics with Christopher Kelly and verified the descriptions in the Manual.

1. Supervision

We specifically discussed the roles of Martin and Steven Sands in the supervisory process and I interviewed each of them during the course of preparing for this report.

2. Investment Adviser Registration and Licensing, Form ADV

I reviewed the current Form ADV and discussed whether anyone needed to be registered as an investment adviser representative. Additionally, I discussed each of the following items with Christopher Kelly to determine whether the following procedures were performed or reviewed.

a. Registration

SB 000007

SEC-NY8127-000002222

- b. Filing Fees
- c. Updating requirements
- d. State registrations, as necessary
- e. Reporting under the Securities Exchange Act of 1934

3. Code of Ethics

I discussed with Christopher Kelly and with Martin and Steven Sands the potential conflicts of interest which exist as a result of the multiple companies with which each of the Sands is affiliated and the various funds which the Firm manages. In part, these potential conflicts are obviated by the appointment of Portfolio Manager for each Fund.

- 4. Prohibited conduct under the securities laws
- 5. Privacy of client information
- 6. Conflicts of interest
- 7. Service as a director
- 8. Reporting of violations
- 9. Training
- 10. Review and enforcement
- 11. Whistleblower Policy
- 12. Distribution of Code of Ethics

I specifically discussed the procedures in connection with the distribution of documents with Terry Bildt. She maintains records of delivery.

- 13. Books and records
- 14. ~~Safeguarding sensitive information~~
- 15. Personal Trading Policy

a. Responsibility of Chief Compliance Officer to maintain records of personal securities transactions

- b. Pre-approval of personal securities transactions
- c. November 29, 2004 Consent Order requirements
- d. Personal Securities Trading Report and Authorization Form
- e. Initial and Annual Reports
- f. Quarterly Reports
- g. Record keeping requirements

SB 000008

16. Periodic Review of Compliance Policies and Procedures

I discussed with Christopher Kelly the imposition of a requirement to have an outside third party review the compliance procedures of the Firm each year and the provision for that requirement in the Compliance Manual. We also discussed the specific follow up with the Mangers.

17. Books and Records pursuant to Section 204-2 of the Investment Advisers Act of 1940.

18. Fiduciary Capacity

I discussed with Christopher Kelly the requirement that investment advice must be suitable for clients. I suggested that the language be changed to reflect the "prudent investment adviser" standard which exists in Connecticut and which is a stricter standard than simple suitability.

19. Client Accounts and Statements

20. Privacy policy

I discussed with Terry Bildt the distribution of the Firm's privacy policy to each client and to the investors in the Firm's clients.

21. Advertising and Marketing

I discussed marketing and the way in which the Firm reaches new and existing clients with Chris Kelly and with Hugh Marasa, the Director of Marketing. Mr. Marasa has been a registered broker-dealer agent and is responsible for communicating with investors in the Fund clients as well as facilitating the transfer of clients from one fund to another. Periodically he will speak to new clients. Christopher Kelly works with Hugh Marasa to insure that he does not misrepresent material facts or go beyond his role as a communicator to the Fund clients.

The Firm needs to insure that Hugh Marasa does not need to be registered as an investment adviser representative or that if he otherwise might need to register, comes within an available exemption. While he is strictly a salaried employee of the Firm and is neither a solicitor nor investment adviser representative, the Firm needs to insure that his activities are limited to those which do not require registration. While at the Firm I listened to his side of the conversations with individuals to determine the nature of his interaction with individual investors in the client Funds.

22. Disclosure

23. Electronic communications

24. Insider Trading Prohibitions

25. Trading Practices and Brokerage Allocations

26. Proxy Voting Policies and procedures

27. Complaints

SB 000009

SEC-NY8127-00002224

28. Business Continuity

I discussed business continuity with Terry Bildt who described the detailed procedures and the back up that each of the Managers and Christopher Kelly has. In addition the outside service bureau also has a copy of the continuity plan and can reconstruct the operation should there be a catastrophe at the Firm.

29. Policy Regarding Anti-Money Laundering

IV. Specific Recommendations

Given the new Compliance Manual, the small size of the Firm, the few employees, and the ability of the Chief Compliance officer to review each transaction and to speak to each employee of the Firm immediately, the compliance system at the Firm functions well. It is uniquely dependent on the skill of the Chief Compliance Officer. While there are built in back ups for some of his functions, the Firm relies on the ability of Christopher Kelly to perform these functions.

There are two areas where I recommend changes. The Compliance Manual requires a change in the description of the standard for investment advice from "suitable" to the "prudent investment adviser" standard. The other change is a detailed description of the duties of the Director of Marketing to reflect his interaction with potential investors in the Firm's client funds. The additional description needs to address the potential need for registration as an investment adviser representative or why no registration is necessary.

Generally, the Firm's compliance system functions well to prevent reporting and disclosure violations and to insure that information is retained and distributed as necessary. Should Christopher Kelly or Terry Bildt leave the Firm, the Senior Portfolio Managers would be required to find individuals with their skills to perform all of the functions that they perform to insure that the compliance system continues to operate effectively.

SB 000010

SEC-NY8127-000002225



RICHARD SLAVIN

Please Reply To Westport
Writer's Direct Dial: (203) 341-5310
Email: rslavin@cohenandwolf.com

June 7, 2010

VIA FEDERAL EXPRESS

Ralph Lambiase, Director
Securities and Business Investments Division
Connecticut Banking Department
260 Constitution Plaza
Hartford, Connecticut 06103

Re: Sands Brothers Asset Management, LLC ("SBAM") Compliance Report

Dear Mr. Lambiase:

I attach the Report of my analysis of the Sands Brothers Asset Management compliance system as required by the September 9, 2009 order of the Banking Commissioner (the "Consent Order").

As required by the Consent Order, I have given a copy of this report to Christopher Kelly, Chief Compliance Officer and Chief Operating Officer of Sands Brothers Asset Management, LLC so that he may also provide a response to my analysis.

Very truly yours,

Richard Slavin

RS/es

Enclosures

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SB 000221

SEC-NY8127-000002436

November 15, 2009. In addition I interviewed management, particularly Christopher Kelly, Esq.

operations over the last three

Part of that experience caused

become familiar with

I also reviewed the Firm's most current Litigation Report to be filed with the Connecticut

the Select Access Funds, the Genesis Funds, and the Venture Funds, the "Funds").

SB 000222

SEC-NY8127-000002437

Select Access III LLC, and SB Opportunity Technology Management Associates Institutional

consistent returns primarily by making strategic and opportunistic loans, secured and

investments is to generate higher returns than the typical asset backed loan fund. The Genesis

placements. They may also invest in public companies or in other managed vehicles. The Venture Funds invest in a number of sectors including, but not limited to technology, health care, business services, finance, and transportation. These funds are currently closed to new investors.

The Venture Funds pay SBAM a quarterly advisory fee based upon assets under management. In addition, affiliates of SBAM which are member-managers of the Venture Funds may receive an annual performance allocation, subject to the performance of the funds. The executive officers of SBAM also serve as the managers of the entities which are the member-managers. The Venture Funds are structured to require long-term investment by investors in those funds.

The Venture Funds are Sands Brothers Venture Capital LLC, Sands Brothers Venture Capital II LLC, Sands Brothers Venture Capital III LLC, Sands Brothers Venture Capital IV LLC, 280 Ventures LLC, Granite Associates LLC, and Katie and Adam Bridge Partners, L.P.

4. Vantage Point Fund

The Vantage Point Fund was organized in 2009 and commenced operations in March 2009. The Vantage Point Fund invests primarily in residential mortgage backed securities. The Vantage Point Fund will pay to SBAM a monthly management fee equal to 2% annually, and, subject to performance, will make a 20% annual performance allocation to the general partner of the Vantage Point Fund, which is owned by related persons of SBAM, subject to a high water mark. The Vantage Point Fund will charge an operational fee (in addition to the monthly management fee) equal to the greater of (i) approximately 0.000667% (1/15 of 1% monthly) of the net assets of the Vantage Point Fund or (ii) \$10,416.66 per month (\$125,000 annually).

5. SBAM Personnel

Martin and Steven Sands are the co-founders of the Firm and are the Senior Portfolio Managers. They have ultimate responsibility for the management of the funds which SBAM manages. Christopher Kelly is the Chief Compliance Officer and Chief Operating Officer. He is responsible for the Firm's compliance and he is responsible for operations which do not involve investment decision-making.

There are three Portfolio Managers who have more direct responsibility for management of the funds of the Firm's clients. Brian Cloonan manages the Venture Funds, Tim Doede manages the Funds, and Dan Libby manages the Select Funds, which are funds of funds, and he also manages the Vantage Fund, which is a distressed fund. Mr. Cloonan is to be replaced shortly by Gavin Watson who is currently an analyst for the Firm. He will replace Mr. Cloonan on approximately June 18, 2010.

Only the Vantage Point Fund and the Genesis Funds currently take new investors.

Rosalyn Warg is the Executive Assistant and Office Manager. She has only recently replaced the previous Executive Assistant. Ms. Warg has assumed most of the compliance duties of the prior Executive Assistant. She has significant ministerial compliance responsibility. There are two drivers who are employed by the Firm, John Antonetti and Claude Maynard, Sr. In addition Anita Sands, Martin and Steven Sands' mother, is employed as a consultant by the Firm and Hugh Marasa is Director of Marketing. He is a salaried employee whose job is primarily to retain clients. In addition, he discusses investments in other SBAM managed funds with investors in other SBAM funds. Rosalind Tsai is the Executive Assistant to Steven Sands and performs ministerial tasks based on his duties for SBAM.

6. Trading

The Firm does little trading for its clients; it has few positions. Trades in the Venture Funds are executed with the registered broker-dealer, Laidlaw & Co. Laidlaw may be deemed to be an affiliate of the Firm based on related ownership. As the Firm's Portfolio Managers are required to secure best execution for its clients, Laidlaw's discounted charges generally make it the selection for these trades. The firm does not trade for the Select Funds or for the Genesis Funds. The Venture Funds have few trades and the Vantage Fund trades in mortgage backed securities through a variety of brokers with expertise in the mortgage-backed securities business.

7. Statements and Subscription Agreements

Depending on the requirements of the individual Offering memorandum, the Firm provides the investors in its client funds reports on a monthly or a quarterly basis. As all of the clients became investors through private offerings of securities in the various Funds, I reviewed a sampling of subscription agreements for completeness and to insure that they existed and are readily available.

III. Compliance Manual

The Firm undertook a complete rewrite of the Manual in 2008 and has used this new Manual since May 2008. It changed its prior generic manual into one that deals with the specific issues facing the Firm on a day-to-day basis.

Given the small staff and comparatively small amount of transactions undertaken by the staff, the Manual has been adapted to reflect the actual amount of compliance personnel with a specific designation of which person is in charge of which operation and who reports to whom.

To test the operations detailed in the Manual I interviewed the personnel detailed above and I reviewed the changes in the Firm with Christopher Kelly and also reviewed with him changes in Firm personnel and how those changes affected the compliance system. I also requested from Christopher Kelly selected samplings of essential documents and reviewed those documents to insure compliance with the provision of the Manual.

I describe below the results of discussions with Christopher Kelly and the compliance system at the Firm.

A. Emails

I discussed the preservation and retrieval of emails with Christopher Kelly as Roslyn Warg has just begun work at the Firm Mr. Kelly has had to assume more of the day-to-day responsibilities until Ms. Warg has had a chance to familiarize herself with them. I also discussed the preparation of emails and the review of their content. When any investor-related email is prepared to be sent outside of the office it must be prepared in draft and reviewed by Christopher Kelly prior to its distribution.

The Firm uses a third party service provider, Global Relay, as a back up for its primary record of emails. It also provides surveillance of all emails. In the event that emails must be recovered the Firm can retrieve over 200,000 emails within one day. The system does not employ discs so that there is no long search requirement.

In reviewing emails the Firm employs a key word search capability in addition to the actual reading of each email before it is sent. The Firm is small enough and has so few employees that Christopher Kelly is able to review each email to be sent to external individuals personally.

The principals of the firm, Martin and Steven Sands, have adopted a policy of never sending emails. Christopher Kelly has had and continues to have meetings with the staff in connection with the proper preparation of emails and the need to have them approved prior to sending. Mr. Kelly anticipates that Ms. Warg will function as an extra layer of compliance review as she will draft many of the emails and perform a review prior to submission to Christopher Kelly. At the May 2008, November 2008, April 2009, and April 2010 compliance meetings a major topic was avoiding the improper use of emails and the use of improper language in emails.

B. Miscellaneous compliance provisions

a. Personal Trading Policy

I reviewed with Christopher Kelly the way in which he reviews trades and how he enforces the policy. In connection with that review he provided the list of access persons at the firm and the requirement of providing current brokerage statements for access persons. Prior to the time when the old Executive Assistant left the Firm she reviewed Mr. Kelly's trades. As he has made no trades since that time there has been no need to review his trades. He anticipates that Hugh Marasa, who has brokerage firm experience, will review those trades if there is a necessity.

In connection with the required review of trading I questioned Christopher Kelly about the existing Connecticut Banking Department Order which requires him to review trades by Martin Sands and his family. The procedure involves the trustee of Mr. Sands' family's accounts informing Christopher Kelly of impending trades, a review of the impending trade, and then the completion of a Personal Trading Form.

Reports

Agreements Agents

c. Restricted List and Market Timing

reviewed the restricted list.

prevent at the Firm because it is small and because there few trades executed. Each

Supervision

Unlike most firms the Chief Compliance Officer sees or speaks with every employee of the Firm every day. He literally looks at every transaction the Firm undertakes and he looks at all of the Firm's business. He looks at every trade. He has the ability to inspect all of the Firm's activities with a view toward identifying any negatives.

C. Testing the Compliance Manual, its procedures, and its effectiveness

I discussed the following Manual topics with Christopher Kelly and verified the descriptions in the Manual.

1. Supervision

We specifically discussed the roles of Martin and Steven Sands in the supervisory process and I interviewed each of them during the course of preparing for this report.

2. Investment Adviser Registration and Licensing, Form ADV

I reviewed the current Form ADV and discussed whether anyone needed to be registered as an investment adviser representative. Additionally, I discussed each of the following items with Christopher Kelly to determine whether the following procedures were performed or reviewed.

- a. Registration
- b. Filing Fees
- c. Updating requirements
- d. State registrations, as necessary
- e. Reporting under the Securities Exchange Act of 1934

3. Code of Ethics

I discussed with Christopher Kelly the potential conflicts of interest which exist as a result of the multiple companies with which each of the Sands is affiliated and the various funds which the Firm manages. In part, these potential conflicts are obviated by the appointment of a Portfolio Manager for each Fund.

- 4. Prohibited conduct under the securities laws
- 5. Privacy of client information
- 6. Conflicts of interest
- 7. Service as a director
- 8. Reporting of violations
- 9. Training
- 10. Review and enforcement
- 11. Whistleblower Policy
- 12. Distribution of Code of Ethics

17. Books and Records pursuant to Section 204-2 of the Investment Advisers Act of

suggested language be changed

Advertising Marketing

with Christopher Kelly. Hugh Marasa, the Director of Marketing, has been a registered broker-dealer agent and is responsible for communicating with investors in the Fund clients as well as facilitating the transfer of clients from one fund to another. Periodically he will speak to new

clients. Christopher Kelly works with Hugh Marasa to insure that he does not misrepresent material facts or go beyond his role as a communicator to the Fund clients.

The Firm needs to insure that Hugh Marasa does not need to be registered as an investment adviser representative or that if he otherwise might need to register, comes within an available exemption. While he is strictly a salaried employee of the Firm and is neither a solicitor nor investment adviser representative, the Firm needs to insure that his activities are limited to those which do not require registration. While at the Firm I listened to his side of the conversations with individuals to determine the nature of his interaction with individual investors in the client Funds.

22. Disclosure
23. Electronic communications
24. Insider Trading Prohibitions
25. Trading Practices and Brokerage Allocations
26. Proxy Voting Policies and procedures
27. Complaints
28. Business Continuity

I discussed business continuity with Christopher Kelly who described the detailed procedures and the back up that each of the Managers has. In addition the outside service bureau also has a copy of the continuity plan and can reconstruct the operation should there be a catastrophe at the Firm.

29. Policy Regarding Anti-Money Laundering

IV. Specific Recommendations

Given the comparatively new Compliance Manual, the small size of the Firm, the few employees, and the ability of the Chief Compliance Officer to review each transaction and to speak to each employee of the Firm immediately, the compliance system at the Firm functions well. ~~It is uniquely dependent on the skill of the Chief Compliance Officer. While there are~~ built in back ups for some of his functions, the Firm relies on the ability of Christopher Kelly to perform these functions.

There are two areas where I recommend increased scrutiny or changes. The first area involves the duties of the Director of Marketing who may interact with potential investors in the Firm's client funds. The Firm's Compliance Manual adequately describes the duties of this position. ~~It is incumbent on the Chief Compliance Officer to continue to monitor this interaction~~ to insure that there is no need for registration as an Investment Advisor Representative. The other recommendation is to accelerate the training of Rosalyn Warg so that she can assume most, if not all, of the duties of the prior Executive Assistant. That position has significant compliance responsibilities which must now be performed by Mr. Kelly.

I particularly reviewed Executive Assistant functions with Christopher Kelly which have been or should be assumed by Ms. Warg. They include:

- A. Distribution of Documents
- B. Distribution of Privacy Policy
- C. Business Continuity
- D. Management of Filing Fees
- E. Distribution of the Code of Ethics
- F. Brochure Delivery
- G. Error Corrections
- H. Emails

Generally, the Firm's compliance system functions well to prevent reporting and disclosure violations and to insure that information is retained and distributed as necessary. Should Christopher Kelly or Rosalyn Warg leave the Firm, the Senior Portfolio Managers would be required to find individuals with their skills to perform all of the functions that they perform to insure that the compliance system continues to operate effectively.


01/11/10

RICHARD SLAVIN

Please Reply To Westport
Writer's Direct Dial: (203) 341-5310
Email: rslavin@cohenandwolf.com

December 7, 2010

VIA FEDERAL EXPRESS

Ralph Lambiase, Director
Securities and Business Investments Division
Connecticut Banking Department
260 Constitution Plaza
Hartford, Connecticut 06103

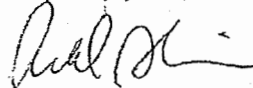
Re: Sands Brothers Asset Management, LLC ("SBAM") Compliance Report

Dear Mr. Lambiase:

I attach the Report of my analysis of the Sands Brothers Asset Management compliance system as required by the September 9, 2009 order of the Banking Commissioner (the "Consent Order").

As required by the Consent Order, I have given a copy of this report to Christopher Kelly, Chief Compliance Officer and Chief Operating Officer of Sands Brothers Asset Management, LLC so that he may also provide a response to my analysis.

Very truly yours,



Richard Slavin

RS/rb
Enclosures

SB 000242

SEC-NY8127-000002457

ANALYSIS OF COMPLIANCE SYSTEM OF
SANDS BROTHERS ASSET MANAGEMENT, LLC

Richard Slavin, Esq.
Cohen and Wolf, P.C.
320 Post Rd. West
Westport, CT 06880
(203)-341-5310

I. Introduction

I have been engaged to perform periodic analyses of the Sands Brothers Asset Management, LLC (the "Firm" or "SBAM") compliance system. This engagement is the result of the September 9, 2009 order of the Banking Commissioner. In that order the Firm agreed to comply with a number of requirements. Among those requirements was the production of an independent consultant's report in connection with the Firm's consulting system.

To prepare this report I reviewed the Firm's Compliance Manual which was revised as of November 15, 2009. In addition I interviewed SBAM's Chief Compliance Officer and Chief Operating Officer, Christopher Kelly, Esq. ("Christopher Kelly") The firm has recently consolidated its physical space so it was an easy task to observe its operations while interviewing Christopher Kelly.

I visited the Firm at its Greenwich, Connecticut location to review its operations and to interview Mr. Kelly. In addition, I have had significant experience with the Firm and its operations over the last three years. Part of that experience caused me to become familiar with the facts which engendered the Banking Department investigation of the Firm. During that process I reviewed Offering Memoranda of the Firm's clients and I became somewhat familiar with how the Firm advised its clients.

I also reviewed the Firm's most current Litigation Report to be filed with the Connecticut Banking Department and discussed that report with Mr. Kelly. In addition I reread the Firm's Compliance Manual and prepared an examination outline which emphasized the compliance duties of the SBAM personnel. I used this outline to test the compliance system.

II. Structure of the Firm and the Firm's Clients

The Firm has been a federally registered investment adviser since 1999. The Firm has no individual clients. SBAM advises a group of funds of hedge funds (the "Select Access Funds"), two asset-based lending funds (the "Genesis Funds"), a group of venture capital funds (the "Venture Funds") and a distressed securities fund (the "Vantage Point Fund" and, together with the Select Access Funds, the Genesis Funds, and the Venture Funds, the "Funds").

1. The Select Access Funds

The Select Access Funds are a group of multi-strategy funds of hedge funds. The Select Access Funds invest with a carefully selected group of hedge fund managers throughout the hedge fund industry. Individual investors in the Select Access Funds have the benefit of management at two levels, selection and monitoring of managers by SBAM and the actual management of funds by the individually selected fund managers. SBAM tracks the performance of a broad group of managers and then selects managers and allocates funds to maximize risk-adjusted performance. These funds are closed to new investors and are being wound down.

The Select Access Funds pay SBAM an annual advisory fee based on net asset value payable in arrears. In addition, affiliates of SBAM which are member-managers of each of the Select Access Funds may receive an annual performance allocation, subject to the performance of the funds. The executive officers of SBAM also serve as the managers of the entities which are the member-managers.

The Select Access Funds are Select Access LLC, Select Access (Institutional) LLC, Select Access III LLC, and SB Opportunity Technology Management Associates Institutional LLC.

2. Genesis Merchant Partners

SBAM is also investment advisor to Genesis Merchant Partners, LP and Genesis Merchant Partners II, L.P. (the "Genesis Funds"). The objective of the Genesis Funds is to seek consistent returns primarily by making strategic and opportunistic loans, on a secured and unsecured basis, to domestic or foreign borrowers. These borrowers include small and micro-cap public companies, private companies and special purpose real estate and other niche businesses. The focus of the Genesis Funds' investment is on markets which SBAM considers underserved, out of favor, ignored, less than prime, or distressed. The purpose of these types of investments is to generate higher returns than the typical asset backed loan fund. The Genesis Funds are not limited to the types of investments detailed above and may make investments in a broad range of investments at the discretion of SBAM.

The Genesis Funds pay SBAM a monthly management fee based on net asset value and may make an annual performance allocation to the general partner of the Genesis Funds. The general partner is owned by persons who may be considered to be related persons to SBAM.

3. Venture Funds

SBAM advises the Venture Funds which typically make investments in private placements. They may also invest in public companies or in other managed vehicles. The Venture Funds invest in a number of sectors including, but not limited to technology, health care, business services, finance, and transportation. These funds are currently closed to new investors.

The Venture Funds pay SBAM a quarterly advisory fee based upon assets under management. In addition, affiliates of SBAM which are member-managers of the Venture Funds may receive an annual performance allocation, subject to the performance of the funds. The executive officers of SBAM also serve as the managers of the entities which are the member-managers. The Venture Funds are structured to require long-term investment by investors in those funds.

The Venture Funds are Sands Brothers Venture Capital LLC, Sands Brothers Venture Capital II LLC, Sands Brothers Venture Capital III LLC, Sands Brothers Venture Capital IV LLC, 280 Ventures LLC, Granite Associates LLC, and Katie and Adam Bridge Partners, L.P.

4. Vantage Point Fund

The Vantage Point Fund was organized in 2009 and commenced operations in March 2009. The Vantage Point Fund invests primarily in residential mortgage backed securities. The Vantage Point Fund will pay to SBAM a monthly management fee equal to 2% annually, and, subject to performance, will make a 20% annual performance allocation to the general partner of the Vantage Point Fund, which is owned by related persons of SBAM, subject to a high water mark. The Vantage Point Fund will charge an operational fee (in addition to the monthly management fee) equal to the greater of (i) approximately 0.000667% (1/15 of 1% monthly) of the net assets of the Vantage Point Fund or (ii) \$10,416.66 per month (\$125,000 annually).

5. SBAM Personnel

Martin and Steven Sands are the co-founders of the Firm and are the Senior Portfolio Managers. They have ultimate responsibility for the management of the funds which SBAM manages. Christopher Kelly is the Chief Compliance Officer and Chief Operating Officer. He is responsible for the Firm's compliance and he is responsible for operations which do not involve investment decision-making.

There are three Portfolio Managers who have more direct responsibility for management of the funds of the Firm's clients. Gavin Watson manages the Venture Funds, Tim Doede manages the Genesis Funds, and Dan Libby manages the Select Funds, which are funds of funds, and he also manages the Vantage Fund, which is a distressed fund.

None of the funds currently takes new investors.

Rosalyn Warg is the Executive Assistant and Office Manager. Ms. Warg has assumed some of the compliance duties of the prior Executive Assistant. She has some ministerial compliance responsibility. There are two drivers who are employed by the Firm, John Antonetti and Claude Maynard, Sr. In addition Anita Sands, Martin and Steven Sands' mother, is employed as a consultant by the Firm and Hugh Marasa is Director of Marketing. He is a salaried employee whose job is primarily to retain clients. In addition, he discusses investments in other SBAM managed funds with investors in other SBAM funds. Mr. Marasa is now resident in San Francisco. Rosalind Tsai is the Executive Assistant to Steven Sands and performs ministerial tasks based on his duties for SBAM.

*Tim Doede left
Dan Libby left
Brian Clouston left*

*Tas analyst now analyst
Dan Klein
Dan Claroni
Gavin Watson*

6. Trading

The Firm does little trading for its clients; it has few positions. Trades in the Venture Funds are executed with the registered broker-dealer, Laidlaw & Co. Laidlaw may be deemed to be an affiliate of the Firm based on related ownership. As the Firm's Portfolio Managers are required to secure best execution for its clients, Laidlaw's discounted charges generally make it the selection for these trades. The firm does not trade for the Select Funds or for the Genesis Funds. The Venture Funds have few trades and the Vantage Fund trades in mortgage backed securities through a variety of brokers with expertise in the mortgage-backed securities business.

7. Statements and Subscription Agreements

Depending on the requirements of the individual Offering memorandum, the Firm provides the investors in its client funds reports on a monthly or a quarterly basis. As all of the clients became investors through private offerings of securities in the various Funds, I reviewed a sampling of subscription agreements for completeness and to insure that they existed and are readily available.

8. SBAM takes the positions that it has custody of its clients' assets as it has custody of some securities; however, it is not subject to the SEC's surprise audit rule for brokers with custody. It provides monthly reports to its fund investors as well as sending its audits to them. The audits are done by PCAOB accountants.

subject to custody rules

- get out of custody and use

III. Compliance Manual

The Firm undertook a complete rewrite of the Manual in 2008 and has used this new Manual since May 2008. It changed its prior generic manual into one that deals with the specific issues facing the Firm on a day-to-day basis.

Given the small staff and comparatively small amount of transactions undertaken by the staff, the Manual has been adapted to reflect the actual amount of compliance personnel with a specific designation of which person is in charge of which operation and who reports to whom.

To test the operations detailed in the Manual I prepared an outline of responsibilities and questioned the Chief Compliance Officer about the conduct of those responsibilities. ~~the consolidation of space makes physical supervision easier~~ Chief Compliance officer. Mr. Kelly now is not separated from the firm's other personnel, although most of his supervisory functions can be performed by computer review. I also requested from Christopher Kelly selected samplings of essential documents and reviewed those documents to insure compliance with the provisions of the Manual.

I describe below the results of discussions with Christopher Kelly and the compliance system at the Firm.

A. Emails

I discussed the preservation and retrieval of emails with Christopher Kelly I also discussed the preparation of emails and the review of their content. When any investor-related email is prepared to be sent outside of the office it must be prepared in draft and reviewed by Christopher Kelly prior to its distribution.

The Firm uses a third party service provider, Global Relay, as a back up for its primary record of emails. It also provides surveillance of all emails. In the event that emails must be recovered the Firm can retrieve over 200,000 emails within one day. The system does not employ discs so that there is no long search requirement.

In reviewing emails the Firm employs a key word search capability in addition to the actual reading of each email before it is sent. The Firm is small enough and has so few employees that Christopher Kelly is able to review each email to be sent to external individuals personally.

The principals of the firm, Martin and Steven Sands, have adopted a policy of never sending emails. Christopher Kelly has had and continues to have meetings with the staff in connection with the proper preparation of emails and the need to have them approved prior to sending. Mr. Kelly anticipates that Ms. Warg will function as an extra layer of compliance review as she will draft many of the emails and perform a review prior to submission to Christopher Kelly. At the May 2008, November 2008, April 2009, and April 2010 compliance meetings a major topic was avoiding the improper use of emails and the use of improper language in emails.

B. Miscellaneous Compliance Provisions

a. Personal Trading Policy

I reviewed with Christopher Kelly the way in which he reviews trades and how he enforces the policy. In connection with that review he provided the list of access persons at the firm and the requirement of providing current brokerage statements for access persons.

In connection with the required review of trading I questioned Christopher Kelly about the existing Connecticut Banking Department Order which requires him to review trades by Martin Sands and his family. The procedure involves the trustee of Mr. Sands' family's accounts informing Christopher Kelly of impending trades, a review of the impending trade, and then the completion of a Personal Trading Form. No trades have been effected since the last report.

b. Reports to investors in funds

The Firm prepares a Monthly Fund Review for the Genesis Funds, Select Access Funds, and Vantage Point Fund. I reviewed a sampling of Monthly Fund Reviews. Christopher Kelly performs a prior review for accuracy before the statements are sent to prevent misstatements or misrepresentations.

c. Preservation and access to compliance documents

All compliance documents are maintained on Christopher Kelly's hard drive. I tested this system to insure that he had instantaneous access to documents which might be

requested in an examination or which he might need to refresh his recollection about reviews he performed or other lists or other documents which show compliance with procedures in the Compliance Manual.

In prior reviews I have requested subscription agreements for private offerings of securities which he was able to produce immediately. He was also able to produce originally signed documents based on his archiving system. To prevent tampering or unauthorized access to these documents each computer has access codes.

d. Agreements with Placement Agents

In prior reviews I reviewed Placement agent agreements but I did not review existing those agreements for this review. As there was no activity by these Placement Agents, there was nothing to review. There are existing agreements with Lane Capital Markets and with Alternative Asset Investment Management Securities, with which there has been no activity.

e. Restricted List and Market Timing

I reviewed the procedures for the restricted list with Christopher Kelly. They have not changed since the last report. Each person in the Firm is trained to discuss public companies with Christopher Kelly. He periodically reminds each Portfolio Manager of that person's responsibility to discuss public companies and the trading in their securities with him. I reviewed the restricted list.

I discussed the prevention of market timing and discovered that it is easy to prevent at the Firm because it is so small and because there are so few trades executed. Each trade must be reviewed by Christopher Kelly before it is executed. Unlike most compliance officers, Christopher Kelly is not required to "test" for market timing, he reviews every trade and can determine what is involved.

f. Overall Supervision

Unlike most firms the Chief Compliance Officer sees or speaks with every employee of the Firm every day. He literally looks at every transaction the Firm undertakes and he looks at all of the Firm's business. He looks at every trade. He has the ability to inspect all of the Firm's activities with a view toward identifying any negatives.

C. Testing the Compliance Manual, Its procedures and Its Effectiveness

I discussed the following Manual responsibilities with Christopher Kelly and verified the descriptions in the Manual.

I. Responsibilities of Chief Compliance Officer

A. Principal for purposes of review of Martin Sands trades.

Time 11/22
Mr. Kelly continues to perform this role for Mr. Sands and his family but there were no trades during the last six months.

B. Review and modifications of firm policy

Updated in manual
Mr. Kelly has conducted a review within the last six months and he has undergone this compliance review ~~three times~~ in the last year.

*Completed new Part II
Part I changed slightly*

C. Form ADV

Mr. Kelly prepares it and its amendments and will complete the new Part II before year end.

D. Supervisory responsibilities of various states

yes

The firm only has clients in New York and Connecticut and he is responsible for staying current with any filings or requirements.

file

E. 13d and 13g reports

The firm has never had to file these reports.

F. Code of Ethics

1. Consent for independent business practices

Not applicable

2. Prohibited conduct—conflict of interest

yes

Mr. Kelly is involved in all discussions of any potential deals and agreements and is able to assess any potential conflicts

3. Compromising situations

Day-to-day evaluation

4. Personal securities transactions

None this year.

Employees submit and sign off annually

5. Conflict of interest disclosure

Mr. Kelly is involved in these discussions before any transactions are effected.

6. Director of publicly held company

yes

Not applicable

G. Personal Account Trading Policy

1. Maintains current records of all personal securities transactions of

Access persons

2. Pre-approval of all transactions

Mr. Kelly maintains records and pre-approves all transactions.

3. Initial and annual reports—10 and 45 days

The initial report is part of any new hiring package and the annual report is accomplished within the time period.

4. Quarterly personal securities trading report

True

This report is not required. It is superseded by a pre-approval process which is before the fact rather than after.

5. Transaction record—file for each employee

Discussed *Pro Rec. Approval from Kelly, no process.*

6. Test reports for front running, scalping, or other abuses—sign off

Mr. Kelly performs this analysis when he reviews statesmen's and pre-approves transactions.

H. Whistle Blower Policy

- 1. Open door policy
- 2. Acknowledge receipt of communications

Yes

There has never been an issue of whistleblowing.

I. Periodic Review of Compliance procedures and policies

1. Review annually

Mr. Kelly reviews the policies and procedures on an on-going basis and especially prior to the annual compliance meeting.

2. Compliance training

True

This training occurs annually in April. *- and online work.*

3. Monitor and test internal compliance through internal audits

no records

Mr. Kelly performs this function by looking at every transaction.

4. Insure proper registration

There is no individual registration.

5. Report violations to a manager

That occurs when there are complaints.

Whistle

6. There has been one complaint in the reporting period which was really a request for information but was treated as a complaint for compliance purposes.

1) Ireland

J. Maintain Section 204 Books and Records

2) July of 1998

K. Fiduciary duty

1 report

1. Manager's advice in the best interests of the client

3) by resolution and call sheets

Mr. Kelly reviews every transaction prior to execution and has that opportunity to review advice.

4) by Kelly

L. Custody

5) he sat there

Addressed in the narrative above.

6) by Kelly

M. Quarterly Account Statements

7) performance

There is an annual audit of each fund. Investors in the Genesis, Vantage, and Select Funds receive monthly reports.

N. Solicitation

See above for discussion of Placement Agent agreements.

O. Managers must tell Chief Compliance officer of fund interests and the Chief Compliance Officer must review offers for compliance.

Mr. Kelly periodically reviews the Private Placement Memoranda for the funds and updates them as necessary.

1. Director of marketing provides copies of all advertising to CCO prior to use.

The only advertising is what is referred to as a Fund Review. These documents are sent to investors monthly and are distributed by the third-party administrator.

*monthly
perform
fund review
prior to distribution*

2. Chief Compliance officer must review and approve all advertising

Mr. Kelly reviews the Fund Review prior to its distribution.

P. Disclosures to the public and regulators

1. Chief Compliance officer and Managers determine whether amendment must be made.

Chief Compliance officer prepares the amendment. The firm's size makes it easier for him to know about all of the Firm's activities.

Q. Electronic Communications

1. Chief Compliance Officer supervises

In practice the Chief Compliance officer is responsible for approval and often preparation.

2. Chief Compliance Officer and Executive Assistant review for the

following:

a. timely notice

b. Access is the same as in paper form.

c. Evidence of delivery

d. Security

Emails have a back up system and accessible by address only.

*password
- key system to prevent
compliance device -
helping to catch
issues
done*

3. Chief Compliance officer monitors the firm's use of the Internet.

a. Funds' websites are password protected

True

There are no individual fund websites. Sands Brothers has a website but only the cover page is accessible to the public. All other pages are password protected.

b. if managed accounts, password protection is not required.

There are no managed accounts.

R. Principal and Agency cross-transactions

1. Manager and Chief Compliance Officer review to insure that decisions are made based on the best interests of the client

There were no cross-transactions.

S. Inside Information

There were some public company trades on Feb 1st and 2nd. There are very few public company trades. The chief Compliance Officer knows about them before they are consummated.

1. Questions about inside trading referred to Chief Compliance Officer.
2. Report any inside trading to Manager of Chief Compliance Officer.

3. Chief Compliance officer makes the decision about whether employee can trade or not.

4. Chief Compliance Officer supervision

- a. Provide information on a regular basis
- b. Answer questions
- c. Resolve issues
- d. Review policy and update.

5. Portfolio managers

- a. Maintain list that the firm is analyzing.
- b. Maintain restricted list *g*

There is a restricted list based on the companies with which the firm is involved.

- c. Determine blackout periods
- d. Remind managers that investment opportunities go first to the clients.
- e. Trade with Section 16 short swing profits rule in mind.
- f. Assign new analyses to non-conflicted employees.

6. Chief Compliance Officer must make a report to the Managers upon suspecting inside trading.

No such report has ever been made.

T. Trading practices

1. No IPO without prior approval of Chief Compliance officer.

The firm does not purchase IPOs.

2. Chief Compliance Officer must confirm that a trading record reflected bunched trades is maintained.

No bunched trades.

3. Ample records to insure that there are no manipulative or deceptive trades.

The Chief Compliance Officer reviews all transactions and performs those reviews with manipulative or deceptive practices in mind.

4. Chief Compliance Officer reviews each trader's short sales periodically.

There have been no short sales.

5. The Chief Compliance officer reviews annually the allocation of brokerage commissions and soft dollar discourse as well as conflict of interest

All trades cost 1 or 2 cents per share. The firm typically uses Laidlaw which, because of its affiliation, gives the firm a discount on trade costs.

6. The Chief Compliance Officer must investigate brokerage allocation and soft dollar abuse complaints from employees.

There are no soft dollar payments to the firm.

U. Complaints

1. Chief Compliance Officer handles all written complaints

See above

There was one complaint in the last period which was made by email. The Chief Compliance officer handled it and put it into the Complaint file which is maintained for each individual.

2. Employees must report all complaints to the Chief Compliance Officer.

V. Anti-Money Laundering

1. Reported to Chief Compliance Officer.
2. Evaluate Activities.

See above

There have been no anti-money laundering referrals in the last six months.

3. Chief Compliance Officer and managers to determine if there should be additional action based on the seriousness of the matter.

4. The Chief Compliance Officer may not accept funds from a prospective investor until that person is checked against the OFAC list.

5. The Chief Compliance Officer or his designee must review background information on each prospective investor.
6. The Chief Compliance Officer must make AML filings in conjunction with the Managers.

II. Responsibilities of the Executive Assistant

Rather than the strict recitation of duties which seem to be required of the Executive Assistant her role is more of a reminder for other people. *CCO guides her.*

- A. The Chief Compliance Officer and the Executive Assistant maintain files.

In reality the Executive Assistant has no independent responsibility and the Chief Compliance Officer maintains the compliance files.

- B. Deliver the manual and acknowledgment agreement to employees.

This function is performed by the Executive Assistant at the time of hiring.

- CCO* C. Maintain required balances.

This item refers to the balances which must be kept with IARD for registration purposes.

- yes* D. Distribute Code of Ethics.

The Executive Assistant delivers this document to new employees.

- E. Managers, the Chief Compliance Officer, and the Executive Assistant safeguard Information.

yes The Executive Assistant gives the Chief Compliance Officer correspondence to review and helps send emails to investors.

- F. Responsible for Compliance with side letters.

There are no side letters. *CCO is responsible - there may be do - old & not relevant.*

- G. Privacy Policy

The Executive Assistant assures that the privacy policy is distributed to investors with written statements. *Fund Prospectus does that.*

1. Policy given out with subscription documents
2. Maintain record of recipients of privacy policy

This information is kept in a log and is maintained by the Genesis and Vantage funds' administrators. The administrator is ODB *Ful Savies. (this policy administrator)*

- yes* 3. Sent annually to all investors in a fund.

4. The Chief Compliance Officer insures that all service providers observe privacy policies.

- H. Deliver Form ADV Part II to any new client

This function is handled by the third party administrator. *yfb*

1. Deliver annually—204(3) statement to each client.

I. The Chief Compliance Officer and Executive Assistant insure that errors in accounts are corrected to make the client whole. *CEO & assistants.*

The Executive Assistant actually does not perform this function.

J. Develop and implement written business continuity plan along with the Chief Compliance officer and managers.

The Executive Assistant does participate in the updating of this plan and concentrates on the data processing function and on the updating of information.

K. The Executive Assistant maintains the books and records required by Exhibit B to the manual.

The Executive Assistant has a role but is not sole responsible.

IV. Specific Recommendations

~~Given the comparatively new Compliance Manual, the small size of the Firm, the few employees, and the ability of the Chief Compliance Officer to review each transaction and to speak to each employee of the Firm immediately, the compliance system at the Firm functions well. It is uniquely dependent on the skill of the Chief Compliance Officer. While there are built in back ups for some of his functions, the Firm relies on the ability of Christopher Kelly to perform these functions.~~

The Chief Compliance Officer needs to revise the Compliance Manual to reflect the existence of the third party fund administrator and the role which that entity plays in the compliance process. Also the Chief Compliance Officer needs to modify the Compliance Manual to reflect that the Executive Assistant does not perform all of the functions assigned to her by the Compliance Manual. In prior reports I cited the potential for registration of Hugh Marasa, the Director of Marketing. Mr. Marasa is now located off-site and while electronic communication allows for the monitoring his activates and any potential transactions, it would be difficult for any supervisor to listen to his conversations with existing investors in funds or monitor whether he was attempting to sell new interests. Any attempt to sell new interests would probably require registration as an Investment Adviser Representative with the state of California. Care should be taken to insure that Mr. Marasa's communications with investors do not go over the line. There are two areas where I recommend increased scrutiny or changes. The first area involves the duties of the Director of Marketing who may interact with potential investors in the Firm's client funds.

Generally, the Firm's compliance system functions well to prevent reporting and disclosure violations and to insure that information is retained and distributed as necessary. Should Christopher Kelly or Rosalyn Warg leave the Firm, the Senior Portfolio Managers would be required to find individuals with their skills to perform all of the functions that they perform to insure that the compliance system continues to operate effectively. Most of the compliance function is performed by Mr. Kelly. Without his hands-on scrutiny the system would probably break down.



RICHARD SLAVIN

Please Reply To Westport
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December 7, 2011

VIA FEDERAL EXPRESS

Eric Wilder, Director
Securities and Business Investments Division
Connecticut Banking Department
260 Constitution Plaza
Hartford, Connecticut 06103

Re: Sands Brothers Asset Management, LLC ("SBAM") Compliance Report

Dear Mr. Wilder:

I attach the Report of my analysis of the Sands Brothers Asset Management compliance system as required by the September 9, 2010 order of the Banking Commissioner (the "Consent Order").

As required by the Consent Order, I have given a copy of this report to Christopher Kelly, Chief Compliance Officer and Chief Operating Officer of Sands Brothers Asset Management, LLC so that he may also provide a response to my analysis.

Very truly yours,

Richard Slavin

RS/rb
Enclosure

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SB 000576

SEC-NY8127-000002791

**ANALYSIS OF COMPLIANCE SYSTEM OF
SANDS BROTHERS ASSET MANAGEMENT, LLC**

Richard Slavin, Esq.
Cohen and Wolf, P.C.
320 Post Rd. West
Westport, CT 06880
(203)-341-5310

I. Introduction

I have been engaged to perform periodic analyses of the Sands Brothers Asset Management, LLC (the "Firm" or "SBAM") compliance system. This engagement is the result of the September 9, 2009 order of the Banking Commissioner. In that order the Firm agreed to comply with a number of requirements. Among those requirements was the production of an independent consultant's report in connection with the Firm's consulting system.

To prepare this report I reviewed the Firm's Compliance Manual which was last revised as of June 4, 2010. In addition I interviewed SBAM's Chief Compliance Officer and Chief Operating Officer, Christopher Kelly ("Christopher Kelly"). While I interviewed Mr. Kelly I was also able to observe the Firm's operations. The Firm has a small physical space for its offices and I was able to listen to conversations of SBAM personnel as well as watch Firm personnel perform their duties.

I visited the Firm at its Greenwich, Connecticut location to review its operations and to interview Mr. Kelly. In addition, I have had significant experience with the Firm and its operations over the last four years. Part of that experience caused me to become familiar with the facts which engendered the Banking Department investigation of the Firm and the Commissioner's subsequent order. During that process I reviewed Offering Memoranda of the Firm's clients and I became somewhat familiar with how the Firm advised its clients.

I also discussed the substance of the Firm's current Litigation Report to be filed with the Connecticut Banking Department with Mr. Kelly. In addition I reread the Firm's Compliance Manual and prepared an examination outline which emphasized the compliance duties of the SBAM personnel. I used this outline to test the compliance system.

II. Structure of the Firm and the Firm's Clients

The Firm has been a federally registered investment adviser since 1999. The Firm has no individual clients. SBAM advises a group of funds of hedge funds (the "Select Access Funds"), two asset-based lending funds (the "Genesis Funds"), a group of venture capital funds (the "Venture Funds") and a distressed securities fund (the "Vantage Point Fund" and, together with the Select Access Funds, the Genesis Funds, and the Venture Funds, the "Funds").

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1. The Select Access Funds

The Select Access Funds are a group of multi-strategy funds of hedge funds. The Select Access Funds have invested with a carefully selected group of hedge fund managers throughout the hedge fund industry. Individual investors in the Select Access Funds have the benefit of management at two levels, selection and monitoring of managers by SBAM and the actual management of funds by the individually selected fund managers. SBAM tracks the performance of a broad group of managers and then selects managers and allocates funds to maximize risk-adjusted performance. These funds are closed to new investors and are being wound down.

The Select Access Funds pay SBAM an annual advisory fee based on net asset value payable in arrears. In addition, affiliates of SBAM which are member-managers of each of the Select Access Funds may receive an annual performance allocation, subject to the performance of the funds. The executive officers of SBAM also serve as the managers of the entities which are the member-managers.

The Select Access Funds are Select Access LLC, Select Access (Institutional) LLC, and Select Access III LLC.

2. Genesis Merchant Partners

SBAM is also investment advisor to Genesis Merchant Partners, LP and Genesis Merchant Partners II, LP (the "Genesis Funds"). The objective of the Genesis Funds is to seek consistent returns primarily by making strategic and opportunistic loans, on a secured and unsecured basis, to domestic or foreign borrowers. These borrowers include small and micro-cap public companies, private companies and special purpose real estate and other niche businesses. The focus of the Genesis Funds' investment is on markets which SBAM considers underserved, out of favor, ignored, less than prime, or distressed. The purpose of these types of investments is to generate higher returns than the typical asset backed loan fund. The Genesis Funds are not limited to the types of investments detailed above and may make investments in a broad range of investments at the discretion of SBAM.

The Genesis Funds pay SBAM a monthly management fee based on net asset value and may make an annual performance allocation to the general partner of the Genesis Funds. The general partner is owned by persons who may be considered to be related persons to SBAM.

3. Venture Funds

SBAM advises the Venture Funds, which have typically made investments in private placements. They may also invest in public companies or in other managed vehicles. The Venture Funds invest in a number of sectors including, but not limited to technology, health care, business services, finance, and transportation. These funds are currently closed to new investors and one is winding down its operations.

The Venture Funds pay SBAM a quarterly advisory fee based upon assets under management. In addition, affiliates of SBAM which are member-managers of the Venture Funds may receive an annual performance allocation, subject to the performance of the funds. The executive officers of SBAM also serve as the managers of the entities which are the member-managers. The Venture Funds are structured to require long-term investment by investors in those funds.

The Venture Funds are Sands Brothers Venture Capital LLC, Sands Brothers Venture Capital II LLC, Sands Brothers Venture Capital III LLC, Sands Brothers Venture Capital IV LLC, 280 Ventures LLC, Granite Associates LLC, and Katie and Adam Bridge Partners, L.P.

4. Vantage Point Fund

The Vantage Point Fund was organized in 2009 and commenced operations in March 2009. The Vantage Point Fund invests primarily in mortgage related debt. The Vantage Point Fund will pay to SBAM a monthly management fee equal to 2% annually, and, subject to performance, will make a 20% annual performance allocation to the general partner of the Vantage Point Fund, which is owned by related persons of SBAM, subject to a high water mark. ~~The Vantage Point Fund will charge an operational fee (in addition to the monthly management fee) equal to the greater of (i) approximately 0.000667% (1/15 of 1% monthly) of the net assets of the Vantage Point Fund or (ii) \$10,416.66 per month (\$125,000 annually).~~

5. SBAM Personnel

Martin and Steven Sands are the co-founders of the Firm and are the Senior Portfolio Managers. ~~They have ultimate responsibility for the management of the funds which SBAM manages.~~ Christopher Kelly is the Chief Compliance Officer and Chief Operating Officer. He is responsible for the Firm's compliance and he is responsible for operations which do not involve investment decision-making.

~~There is one Portfolio Manager who has more direct responsibility for management of certain of the funds. Gavin Watson manages the Venture Funds and the Genesis Funds. David Klein and David Claroni have recently joined the Firm as Analysts.~~

~~Only the Vantage Point Fund and the Genesis Funds currently take new investors.~~

Rosalyn Warg is the Executive Assistant and Office Manager. Ms. Warg has assumed some of the compliance duties of the prior Executive Assistant. She has some ministerial compliance responsibility. There are two drivers who are employed by the Firm, John Antonetti and Claude Maynard, Sr. In addition Anita Sands, Martin and Steven Sands' mother, is employed as a consultant by the Firm and Hugh Marasa is Director of Marketing. He is a salaried employee whose job is primarily to retain clients. ~~In addition, he discusses investments in other SBAM managed funds with investors in other SBAM funds.~~ Mr. Marasa is now resident in San Francisco. Rosalind Tsai is the Executive Assistant to Steven Sands and performs ministerial tasks based on his duties for SBAM.

6. Trading

The Firm does little trading for its clients; it has few positions with significant liquidity. Trades in the Venture Funds and the Vantage Point Fund are executed with the registered broker-dealer, Laidlaw & Co. Laidlaw may be deemed to be an affiliate of the Firm based on related ownership. As the Firm's Portfolio Managers are required to secure best execution for its clients, Laidlaw's discounted charges generally make it the best selection for these trades. The Firm does not trade for the Select Funds. The Venture Funds and the Genesis Funds have few trades

7. Statements and Subscription Agreements

Depending on the requirements of the individual Offering Memorandum, the Firm provides the investors in its client funds reports on a monthly or a quarterly basis. As all of the clients became investors through private offerings of securities in the various funds, I reviewed a sampling of subscription agreements for completeness and to insure that they existed and are readily available.

8. Custody

SBAM takes the positions that it has custody of its clients' assets as it has custody of some securities; however, it is not subject to the SEC's surprise audit rule for brokers with custody. It provides monthly or quarterly reports to its fund investors as well as sending its audits to them. The audits are done by PCAOB accountants. SBAM is not subject to the SEC's surprise audit rules based on custody.

9. Regulatory examinations and orders

In October 2010 SBAM, Martin Sands and Steven Sands settled administrative proceedings with the United States Securities and Exchange Commission ("SEC"). The SEC alleged violations of Sections 204 and 207 of the Investment Adviser's Act of 1940 and Rules 204-1 and 204-2, promulgated under that Act, relating to books and records and Form ADV. This matter arose as a result of a 2004 inspection of SBAM by the SEC. Prior to the notice of an intention to charge SBAM with violations neither SBAM nor Martin or Steven Sands had received any communication from the SEC since 2005. In settlement, the parties agreed to cease and desist from violations of the law and rules, agreed to be censured, and agreed to pay a \$60,000 fine.

During the early part of 2010 SBAM provided 59,000 pages of documents to the SEC.

III. Compliance Manual

The Firm undertook a complete rewrite of the Compliance Manual in 2008 and has used this new Manual since May 2008. It changed its prior generic manual into one that deals with the specific issues facing the Firm on a day-to-day basis. The Compliance Manual is updated as necessary. Its last update occurred on June 4, 2010.

Given the small staff and comparatively small amount of transactions undertaken by the staff, the Manual has been adapted to reflect the actual amount of compliance personnel with a specific designation of which person is in charge of which operation and who reports to whom.

To test the operations detailed in the Manual I prepared an outline of responsibilities and questioned the Chief Compliance Officer about the conduct of those responsibilities. The consolidation of space makes physical supervision easier for the Chief Compliance Officer. Mr. Kelly now is not separated from the Firm's other personnel, although most of his supervisory functions can be performed by computer review. I also requested from Christopher Kelly selected samplings of essential documents and reviewed those documents to insure compliance with the provisions of the Manual.

I describe below the results of discussions with Christopher Kelly and the compliance system at the Firm.

A. Emails

I discussed the preservation and retrieval of emails with Christopher Kelly. I also discussed the preparation of emails and the review of their content. When any investor-related email is prepared to be sent outside of the office it must be prepared in draft and reviewed by Christopher Kelly prior to its distribution.

The Firm uses a third party service provider, Global Relay, as a backup for its primary record of emails. It also provides surveillance of all emails. In the event that emails must be recovered the Firm can retrieve over 200,000 emails within one day. The system does not employ discs so that there is no long search requirement.

In reviewing emails the Firm employs a key word search capability in addition to the actual reading of each email before it is sent. The Firm is small enough and has so few employees that Christopher Kelly is able to review each email to be sent to external individuals personally.

The principals of the Firm, Martin and Steven Sands, have adopted a policy of never sending emails. Christopher Kelly has had and continues to have meetings with the staff in connection with the proper preparation of emails and the need to have them approved prior to sending. Mr. Kelly anticipates that Ms. Warg will function as an extra layer of compliance review as she will draft many of the emails and perform a review prior to submission to Christopher Kelly. At the May 2008, November 2008, April 2009, and April 2010 compliance meetings a major topic was avoiding the improper use of emails and the use of improper language in emails.

B. Miscellaneous Compliance Provisions

a. Personal Trading Policy

I reviewed with Christopher Kelly the way in which he reviews trades and how he enforces the policy. In connection with that review he provided the list of access persons at the Firm and the requirement of providing current brokerage statements for access persons. Mr. Kelly's trades are reviewed by Hugh Marasa.

The order requiring trades by Martin Sands and his family to be reviewed by Mr. Kelly has expired. There is no longer any need to perform that review.

b. Reports to Investors in Funds

The Firm prepares a Monthly Fund Review for the Genesis Funds, Select Access Funds, and Vantage Point Fund. I reviewed a sampling of Monthly Fund Reviews. Christopher Kelly performs a prior review for accuracy before the statements are sent to prevent misstatements or misrepresentations.

c. Preservation and Access to Compliance Documents

All compliance documents are maintained on Christopher Kelly's hard drive. I tested this system to insure that he had instantaneous access to documents which might be requested in an examination or which he might need to refresh his recollection about reviews he performed or other lists or other documents which show compliance with procedures in the Compliance Manual.

In prior reviews I have requested subscription agreements for private offerings of securities which he was able to produce immediately. He was also able to produce originally signed documents based on his archiving system. To prevent tampering or unauthorized access to these documents each computer has access codes.

d. Agreements with Placement Agents

In prior reviews I reviewed Placement Agent Agreements but I did not review those agreements for this review. As there was no activity by these Placement Agents, there was nothing to review. There are existing agreements with Lane Capital Markets and with Alternative Asset Investment Management Securities, with which there has been no activity.

e. Restricted List and Market Timing

I reviewed the procedures for the restricted list with Christopher Kelly. They have not changed since the last report. Each person in the Firm is trained to discuss public companies with Christopher Kelly. He periodically reminds each Portfolio Manager of that person's responsibility to discuss public companies and the trading in their securities with him. I reviewed the restricted list.

I discussed the prevention of market timing and discovered that it is easy to prevent at the Firm because it is so small and because there are so few trades executed. Each trade must be reviewed by Christopher Kelly before it is executed. Unlike most compliance officers, Christopher Kelly is not required to "test" for market timing as he reviews every trade prior to consummation and can determine what is involved.

f. Overall Supervision

Unlike most Firms the Chief Compliance Officer sees or speaks with every employee of the Firm almost every day. He literally looks at every transaction the Firm undertakes and he looks at all of the Firm's business. He looks at every trade. He has the ability to inspect all of the Firm's activities with a view toward identifying any negatives.

C. Testing the Compliance Manual, its procedures and its effectiveness

I discussed the following Manual responsibilities with Christopher Kelly and verified the descriptions in the Manual.

I. Responsibilities of Chief Compliance Officer

A. Review and modifications of Firm policy

Mr. Kelly has conducted a review within the last six months.

B. Form ADV

Mr. Kelly completed the narrative Part 2 of Form ADV in a timely manner and he has amended Part 1 slightly. The review and amendment of Form ADV is Mr. Kelly's responsibility.

C. Supervisory responsibilities of various states

The Firm only has clients in New York and Connecticut and Mr. Kelly is responsible for staying current with any filings or requirements.

E. 13d and 13g reports

The Firm has never had to file these reports.

F. Code of Ethics

1. Consent for independent business practices

Not applicable

2. Prohibited conduct—conflict of interest

Mr. Kelly is involved in all discussions of any potential deals and agreements and is able to assess any potential conflicts

3. Compromising situations

Mr. Kelly evaluates potential compromising situations on day-to-day basis as they may arise.

4. Personal securities transactions

Employees submit and sign off annually; however, none have occurred this year.

5. Conflict of interest disclosure

Mr. Kelly is involved in these discussions before any transactions are effected.

6. Director of publicly held company

Not applicable

G. Personal Account Trading Policy

1. Maintains current records of all personal securities transactions of

Access persons

2. Pre-approval of all transactions

Mr. Kelly maintains records and pre-approves all transactions.

3. Initial and annual reports—10 and 45 days

The initial report is part of any new hiring package and the annual report is accomplished within the time period.

4. Quarterly personal securities trading report

This report is not required. It is superseded by a pre-approval process which is before the fact rather than after.

5. Transaction record—file for each employee

Mr. Kelly pre-approves all transaction and maintains a record of each form.

6. Test reports for front running, scalping, or other abuses—sign off

Mr. Kelly performs this analysis when he reviews statements and pre-approves transactions.

H. Whistle Blower Policy

1. Open door policy

2. Acknowledge receipt of communications

There has never been an issue of whistleblowing.

I. Periodic Review of Compliance procedures and policies

1. Review annually

Mr. Kelly reviews the policies and procedures on an on-going basis and especially prior to the annual compliance meeting.

2. Compliance training

This training occurs annually in April on the occasion of the annual compliance meeting for Firm personnel.

3. Monitor and test internal compliance through internal audits

Mr. Kelly performs this function by looking at every transaction; however, there have been no transactions this year.

4. Insure proper registration

There is no individual registration.

5. Report violations to a manager

That occurs when there are complaints.

6. Complaints

The Firm has adopted the SEC policy defining a complaint as a written complaint. This year there have been six written complaints. Most of the complaints were about liquidity. One complaint concerned performance and one complaint involved a former fund investor who had withdrawn from the fund. He wanted to receive subsequent statements even though he had left

the fund sometime before. Mr. Kelly reviewed each complaint to insure that there was an appropriate response.

J. Maintain Section 204 Books and Records

K. Fiduciary duty

1. Manager's advice in the best interests of the client

Mr. Kelly reviews every transaction prior to execution and has that opportunity to review advice.

L. Custody

Addressed in the narrative above.

M. Quarterly Account Statements

There is an annual audit of each fund. Investors in the Genesis, Vantage, and Select Funds receive monthly reports.

N. Solicitation

See above for discussion of Placement Agent Agreements.

O. Managers must tell Chief Compliance officer of fund interests and the Chief Compliance Officer must review offers for compliance.

Mr. Kelly periodically reviews the Private Placement Memoranda for the funds and updates them as necessary.

1. Director of Marketing provides copies of all advertising to CCO prior to use.

The primary ongoing advertising is what is referred to as a Fund Review. These documents are sent to investors monthly and are distributed by the third-party administrator. Mr. Kelly also reviews any presentation to investors as well as occasional letters to investors.

2. Chief Compliance officer must review and approve all advertising

Mr. Kelly reviews all advertising material prior to its distribution.

P. Disclosures to the public and to regulators

1. Chief Compliance Officer and Managers determine whether amendment must be made.

Chief Compliance officer prepares the amendment. The Firm's size makes it easier for him to know about all of the Firm's activities.

Q. Electronic Communications

1. Chief Compliance Officer supervises

In practice the Chief Compliance Officer is responsible for approval and often preparation.

following:

2. Chief Compliance Officer and Executive Assistant review for the

- a. Timely notice
- b. Access is the same as in paper form.
- c. Evidence of delivery
- d. Security

Emails have a back-up system and are accessible by password only. Each individual who may access the system has a password. There is a separate compliance drive to which only Mr. Kelly has access.

3. Chief Compliance Officer monitors the Firm's use of the Internet.

- a. The Firm's website is password protected

There are no individual fund websites. The Firm has a website but only the cover page is accessible to the public. All other pages are password protected.

- b. ~~if managed accounts, password protection is not required.~~

There are no managed accounts.

R. Principal and Agency cross-transactions

1. Manager and Chief Compliance Officer review to insure that decisions are made based on the best interests of the client

There were no cross-transactions.

S. Inside Information

1. Questions about inside trading referred to Chief Compliance Officer.
2. ~~Report any inside trading to Manager or Chief Compliance Officer.~~

There are very few public company trades. Mr. Kelly is aware of them prior to their consummation and reviews them for potential insider trading.

3. Chief Compliance Officer makes the decision about whether employee can trade or not.

4. Chief Compliance Officer supervision
 - a. Provide information on a regular basis
 - b. Answer questions
 - c. Resolve issues
 - d. Review policy and update.

5. ~~Portfolio Managers~~

- a. Maintain list that the Firm is analyzing.
- b. Maintain restricted list

There is a restricted list based on the companies with which the Firm is involved.

- c. Determine blackout periods
- d. Remind Managers that investment opportunities go first to the clients.
- e. Trade with Section 16 short swing profits rule in mind.
- f. Assign new analyses to non-conflicted employees.

- 6. Chief Compliance Officer must make a report to the Managers when he suspects inside trading.

No such report has ever been made.

T. Trading practices

- 1. No IPO without prior approval of Chief Compliance Officer.

The Firm does not purchase IPOs.

- 2. Chief Compliance Officer must confirm that a trading record reflecting bunched trades is maintained.

No bunched trades.

- 3. Ample records to insure that there are no manipulative or deceptive trades.

The Chief Compliance Officer reviews all transactions and performs those reviews with manipulative or deceptive practices in mind.

- 4. Chief Compliance Officer reviews each trader's short sales periodically.

There have been no short sales.

- 5. The Chief Compliance Officer reviews annually the allocation of brokerage commissions and soft dollar discourse as well as conflict of interest.

All trades cost 1 or 2 cents per share. The Firm typically uses Laidlaw which, because of its affiliation, gives the Firm a discount on trade costs.

- 6. The Chief Compliance Officer must investigate brokerage allocation and soft dollar abuse complaints from employees.

There are no soft dollar payments to the Firm.

U. Complaints

1. Chief Compliance Officer handles all written complaints

Mr. Kelly reviews complaints and maintains a Complaint file. See more detailed discussion of this year's complaints above.

2. Employees must report all complaints to the Chief Compliance Officer.

V. Anti-Money Laundering

1. Reported to Chief Compliance Officer.
2. Evaluate Activities.

There have never been any anti-money laundering referrals.

3. Chief Compliance Officer and Managers to determine if there should be additional action based on the seriousness of the matter.
4. The Chief Compliance Officer may not accept funds from a prospective investor until that person is checked against the OFAC list.
5. The Chief Compliance Officer or his designee must review background information on each prospective investor.
6. The Chief Compliance Officer or his designee must make AML filings in conjunction with the Managers.

~~II. Responsibilities of the Executive Assistant, Fund Processor, and the Chief Compliance Officer which may be done individually or in combination~~

Rather than the strict recitation of duties which seem to be required of the Executive Assistant her role is more of a reminder for other people.

- ~~A. The Chief Compliance Officer and the Executive Assistant maintain files.~~

In reality the Executive Assistant has no independent responsibility and the Chief Compliance Officer maintains the compliance files.

- B. Deliver the manual and acknowledgment agreement to employees.

This function is performed by the Executive Assistant at the time of hiring.

- C. Maintain required balances.

Mr. Kelly has assumed responsibility for this function. This item refers to the balances which must be kept with IARD for registration purposes.

- D. Distribute Code of Ethics.

The Executive Assistant delivers this document to new employees.

~~E. Managers, the Chief Compliance Officer, and the Executive Assistant safeguard information.~~

The Executive Assistant gives the Chief Compliance Officer correspondence to review and helps send emails to investors.

F. Responsible for compliance with side letters.

There are no side letters which are currently effective. If there were a need to comply with the provisions of a side letter, it would be the Chief Compliance Officer's responsibility.

G. Privacy Policy

The Fund Processor assures that the privacy policy is distributed to investors with written statements.

1. Policy given out with subscription documents
2. Maintain record of recipients of privacy policy

This information is kept in a log and is maintained by the Genesis and Vantage Funds' Fund Processor. The Fund Processor is Greenwich Fund Services.

3. Sent annually to all investors in a fund.

~~4. The Chief Compliance Officer insures that all service providers observe privacy policies.~~

H. Deliver Form ADV Part II to any new client

This function is handled by the Fund Processor.

1. Deliver annually—204(3) statement to each client.

I. the Chief Compliance Officer and administrator insure that errors in accounts are corrected to make the client whole.

J. Develop and implement written business continuity plan along with the Chief Compliance Officer and Managers.

The Executive Assistant does participate in the updating of this plan and concentrates on the data processing function and on the updating of information.

K. The Executive Assistant maintains the books and records required by Exhibit B to the manual.

The Executive Assistant has a role but is not solely responsible.

IV. Specific Recommendations

~~Given the periodic review of the Compliance Manual to keep it current, the small size of the Firm, the few employees, and the ability of the Chief Compliance Officer to review each transaction and to speak to each employee of the Firm immediately, the compliance system at the Firm functions well. It is uniquely dependent on the skill of the Chief Compliance Officer. While there are built in back-ups for some of his functions, the Firm relies on the ability of Christopher Kelly to perform these functions.~~

The Compliance Manual should reflect the roles of the Fund Processor and the administrators in the compliance process.

Generally, the Firm's compliance system functions well to prevent reporting and disclosure violations and to insure that information is retained and distributed as necessary. Should Christopher Kelly or Rosalyn Warg leave the Firm, the Senior Portfolio Managers would be required to find individuals with their skills to perform all of the functions that they perform to insure that the compliance system continues to operate effectively. Most of the compliance function is performed by Mr. Kelly. Without his hands-on scrutiny the system would probably break down.

The Chief Compliance officer should insure that SBAM is properly registered on March 30, 2012. With the changed minimum requirements for assets under management imposed by the Dodd-Frank Act and the resulting SEC regulations the Chief Compliance Officer should confirm that SBAM will be able to maintain its federal registration. Specifically, SBAM may have less than \$100,000,000 under management by the March 30, 2012 deadline. As some of the SBAM funds have been "winding down" it is possible that SBAM's assets under management may be below the SEC registration threshold. The Chief Compliance officer should also be mindful of the exemptions from registration for Venture Capital funds and for hedge funds with less than \$150,000,000 under management. Should SBAM not qualify for an available exemption, it may be required to register in New York, where its headquarters is located.

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U.S. Securities and Exchange Commission

Updated as of September 1, 2013

Staff Responses to Questions About the Custody Rule

The staff of the Division of Investment Management has prepared the following responses to questions about the rule 206(4)-2, the "custody rule" under the Investment Advisers Act of 1940 and expects to update from time to time our responses to additional questions. These responses represent the views of the staff of the Division of Investment Management. They are not a rule, regulation, or statement of the Securities and Exchange Commission, and the Commission has neither approved nor disapproved this information. The adopting release for the most recent amendments to the rule (dated December 30, 2009, the "Adopting Release") can be found at: <http://www.sec.gov/rules/final/2009/ia-2968.pdf>. These responses supersede the previously posted responses to questions regarding the 2003 amendments to the rule. The adopting release for those 2003 amendments ("2003 Release") can be found at <http://www.sec.gov/rules/final/ia-2176.htm>. (Answers that are indicated as modified from the prior version related to the 2003 amendments may have been either changed or clarified without substantive change.)

I. Compliance Dates (This section I is new and posted March 5, 2010.)

Question I.1

Q: An investment adviser that currently sends account statements to its clients in lieu of those from a qualified custodian now must arrange for the account statements to be delivered directly by a qualified custodian. When must the qualified custodian send the first account statements directly to the adviser's clients?

A: The compliance date is March 12, 2010. Accordingly, qualified custodians must deliver account statements for all periods ending on or after March 12, 2010. Thus, quarterly statements ending on March 31, 2010, must be sent by qualified custodians directly to clients. The account statement need only cover the period between the compliance date and March 31, 2010 (but may of course also cover periods before March 12).

Question I.2

Q: Some investment advisers have omnibus account arrangements with qualified custodians who have no client information and thus do not deliver client statements. Advisers are converting these relationships to meet the requirements of amended rule 206(4)-2, but such conversions require obtaining new account documentation from clients and system reprogramming, which may not be feasible in time for the qualified

custodian to send account statements for the period ending March 31, 2010. May these advisers have more time to complete these conversions?

A: The Division would not recommend enforcement action to the Commission if an adviser modifying an omnibus arrangement as described above complies with rule 206(4)-2(a)(3) for those accounts no later than the delivery of the account statement for the third quarter of 2010, provided that (i) the adviser sends notice to each client no later than the time of sending the account statement for the period ending March 31, 2010, clearly describing the way in which the adviser intends to change the account arrangements to comply with the amended rule and the expected timing of those changes, and (ii) the adviser undergoes a surprise examination for 2010.

Question I.3

Q: Must the surprise examination required under rule 206(4)-2(a)(4) be completed before December 31, 2010?

A: No. The surprise examination must commence on or before December 31, 2010 but does not need to be completed until 120 days after the time chosen by the accountant performing the surprise examination. If the adviser itself maintains client assets as qualified custodian, the first surprise examination must commence no later than six months after obtaining the internal control report. For an adviser that becomes subject to the rule after the effective date, the surprise examination must commence within six months after it becomes subject to the rule. However, as a transitional matter, the Division would not recommend enforcement action to the Commission if an adviser that becomes subject to the rule after the effective date has its first surprise examination commence by the later of six months after the adviser becomes subject to the rule or December 31, 2010. (Modified March 15, 2010)

Question I.4

Q: Does the requirement that the accountant performing an annual audit on a pooled investment vehicle for purposes of compliance with the rule must be registered with and subject to regular inspection by the Public Company Accounting Oversight Board ("PCAOB") pursuant to rule 206(4)-2(b)(4)(ii) apply to the 2009 fiscal year?

A: This requirement applies to audits for fiscal years beginning on or after January 1, 2010.

Question I.5

Q: Section III.B.3. of the adopting release (transition section) indicates that for pooled investment vehicles, "[a]n investment adviser to a pooled investment vehicle may rely on the annual audit provision if the adviser (or a related person) becomes contractually obligated to obtain an audit of the financial statements of the pooled investment vehicle for fiscal years beginning on or after January 1, 2010 by an independent public accountant registered with, and subject to regular inspection by, the PCAOB." Does this mean an adviser must be a party to a written

engagement letter with the auditor?

A: No. The obligation to obtain an audit may be evidenced in a partnership agreement, disclosure statement, or engagement letter with the auditor. See 2003 Release, Footnote 47.

Question I.6

Q: Under rule 206(4)-2(b)(4), an independent public accountant performing an annual audit on a pooled investment vehicle in lieu of the required annual surprise examination must be registered with, and subject to, regular inspection by the PCAOB. The effective date of the rule is March 12, 2010. If an accountant is not currently subject to regular inspection by the PCAOB, may the adviser satisfy the requirement for exemption from the surprise examination if the accountant becomes subject to regular inspection by the PCAOB before the issuance of the audited financial statements for the pooled investment vehicle's 2010 fiscal year?

A: Yes.

Question I.7

Q: Rule 206(4)-2(a)(6) requires that an adviser or its related person that maintains client assets as a qualified custodian must obtain (or receive from the related person) a written internal control report (e.g., Type II SAS 70 report) regarding the adviser's or its related person's custodial practices. What is the compliance date for the internal control report?

A: The compliance date for obtaining an internal control report is September 12, 2010 for advisers subject to the requirement on March 12, 2010. Advisers that are newly subject to Rule 206(4)-2(a)(6) (e.g., newly maintaining, or having a related person maintaining, client assets as a qualified custodian after March 12, 2010) must obtain the internal control report within six months of becoming subject to the requirement.

Question I.8

Q: Rule 206(4)-2(a)(6) requires that an adviser or its related person that maintains client assets as a qualified custodian must obtain (or receive from the related person) a written internal control report (e.g., Type II SAS 70 report) regarding the custodial services of the qualified custodian. Does the internal control report need to address the effectiveness of controls over custodial services prior to March 12, 2010, the effective date of the amended rule?

A: No, the internal control report does not need to address the effectiveness of controls over custodial services prior to March 12, 2010, the effective date of the amended rule, even if it results in a shortened examination period for the 2010 internal control report.

Question I.9

Q: Currently, qualified custodians often obtain custody-related SAS 70 reports prepared on a regular reporting cycle. If a qualified custodian

obtained a SAS 70 report in 2009 and plans to obtain a SAS 70 report in 2010, is the qualified custodian expected to alter its reporting cycle to meet (or allow its related person investment adviser to meet) the initial September 12, 2010 compliance date?

A: No, a qualified custodian that obtained a custody-related SAS 70 report in 2009 is not expected to alter its reporting cycle in 2010.

Question I.10

Q: When must advisers registered with the SEC begin using the amended Form ADV?

A: Advisers must provide responses to the additional questions in amended Form ADV in their first annual updating amendment after January 1, 2011. Advisers who file an initial Form ADV before the updated Form ADV is available in IARD may use their first annual updating amendment to provide answers to these additional questions.

II. Definition of Custody; Scope of the Rule

Question II.1

Q: If an adviser inadvertently receives securities from a client, under the amended rule may the adviser forward the securities to the qualified custodian instead of returning the securities to the client?

A: No. If the adviser does not return the securities to the sender within three business days, the adviser not only has custody but has also violated the amended rule's requirement that client securities be maintained in an account with a qualified custodian.¹ However, the Division would not recommend enforcement action to the Commission under certain circumstances if an adviser inadvertently receives tax refunds from tax authorities, or client settlement proceeds from administrators in connection with class action lawsuits and other legal actions, or stock certificates, dividends, or evidence of new debt from issuers in connection with class action lawsuits involving bankruptcy or business reorganization, and forwards these client assets within five business days of its receipt and maintains appropriate records. See Investment Adviser Association, SEC Staff Letter, (Sept. 20, 2007), available at <http://www.sec.gov/divisions/investment/noaction/2007/iaa092007.pdf>. (Modified March 5, 2010.)

Question II.2

Q: If an employee of an advisory firm serves as a trustee to a firm client, does the firm have custody?

A: Generally, yes. The role of the supervised person as trustee is imputed to the advisory firm, thus causing the firm to have custody.

Footnote 139 of the Adopting Release explains, however, that the role of the supervised person as trustee will not be imputed to the advisory firm if the supervised person has been appointed as trustee as a result of a

family or personal relationship with the grantor or beneficiary and not as a result of employment with the adviser. A similar analysis would apply where the supervised person serves as the executor to an estate as a result of a family or personal relationship with the deceased. A personal relationship developed as a result of providing advisory services to a client over many years is not the type of "personal relationship" contemplated by footnote 139. (Modified March 5, 2010.)

Question II.3

Q: If an adviser manages client assets that are not funds or securities, does the amended custody rule require the adviser to maintain these assets with a qualified custodian?

A: No. Rule 206(4)-2 applies only to clients' funds and securities. (Posted 2003.)

Question II.4

Q: Does an adviser have custody if it has authority to transfer client funds or securities between two or more of a client's accounts maintained with the same qualified custodian or different qualified custodians?

A: Under rule 206(4)-2(d)(2)(ii), an adviser has custody if it has the authority to withdraw client assets maintained with a qualified custodian upon the adviser's instruction to the custodian. We do not interpret the authority to withdraw assets to include the limited authority to transfer a client's assets between the client's accounts maintained at one or more qualified custodians if the client has authorized the adviser in writing to make such transfers and a copy of that authorization is provided to the qualified custodians, specifying the client accounts maintained with qualified custodians. (Modified May 20, 2010.)

Question II.5.A

Q: Does an adviser have custody if it has authority to instruct the qualified custodian that maintains a client's account to remit the funds or securities from the account to the same client at his or her address of record?

A: We do not interpret the authority to instruct the qualified custodian maintaining a client's account to remit the funds or securities from the account from time to time to the same client at his or her address of record as having custody if (1) the client has granted such authority to the adviser in writing and a copy of that authorization is provided to the qualified custodian, (2) the adviser has no authority to open an account on behalf of the client; and (3) the adviser has no authority to designate or change the client's address of record with the qualified custodian. (Modified September 9, 2010)

Question II.5.B

Q: Many qualified custodians are subject to regulatory requirements designed to protect against improper or unauthorized changes of address. For example, broker-dealers must send a customer who is a

natural person a notification of a change of address to the customer's old address on or before the 30th day after receiving a notice of the requested change pursuant to Rule 17a-3(a)(17)(i)(B)(2) under the Securities Exchange Act of 1934. Similarly, banking regulators have issued guidance, such as Federal Reserve System Supervisory Letter SR 0-11 (April 26, 2001), Office of Comptroller of the Currency Advisory Letter 2001-4 (April 30, 2001), Federal Deposit Insurance Corporation Financial Institution Letter 39-2001 (May 9, 2001), Office of Thrift Supervision CEO Letter No. 139 (May 4, 2001), and National Credit Union Administration Letter No. 01-CU-09 (September 2001), providing that banks should send confirmation of a customer request for a change of address to both the old and new address on record. If an adviser has a reasonable belief that the qualified custodian, upon receiving the request for change of address, sends a notice of such change to the client at the client's old address of record, may the adviser change a client's address of record with the qualified custodian and still rely on the answer to Question II. 5. A?

A: Yes. (Posted September 9, 2010)

Question II.6

Q: If an adviser has the ID number and password to a client's pension fund account to rebalance and adjust investments in the account, does the adviser have custody?

A: The adviser has custody if password access provides the adviser with the ability to withdraw funds or securities or transfer them to an account not in the client's name at a qualified custodian. (Posted May 20, 2010)

Question II.7

Q: An adviser has a related natural person who is the owner of an account to which the adviser provides advisory services. The adviser otherwise does not have custody under the rule. Does the adviser have custody simply because the related natural person has the ability to withdraw his or her own assets by virtue of being the account holder?

A: If the related person is a natural person and is both the legal and beneficial owner (e.g., he or she is not the trustee of another person) of the account and the beneficial owner for purposes of the securities laws, this related person's access to his or her own account will not impute custody to the adviser. (Posted May 20, 2010)

Question II.8

Q: Under what circumstances does an independent public accountant engaged by an adviser for purposes of complying with the rule need to be registered with, and subject to regular inspection by, the PCAOB?

A: An accountant must be registered with, and subject to regular inspection by, the PCAOB if it is engaged to (1) perform an annual audit of a pooled investment vehicle in accordance with rule 206(4)-2(b)(4); (2) perform an annual surprise examination of an adviser that maintains client assets with a qualified custodian that is the adviser or a related

person of the adviser in accordance with rule 206(4)-2(a)(4); or (3) prepare an internal control report in accordance with rule 206(4)-2(a)(6). (Posted March 15, 2010)

Question II.9

Q: Must a registered investment adviser comply with rule 206(4)-2 with respect to the funds and securities of a person to whom the adviser provides investment advisory services but from which the adviser receives no compensation?

A: Yes. Under rule 203(b)(3)-1(b)(4), an adviser relying on the exemption from registration provided by section 203(b)(3) of the Investment Advisers Act of 1940 need not count as a client any person for whom the adviser provides investment advisory services without compensation. However, rule 203(b)(3)-1 does not control the determination of when a person is considered the client of a registered investment adviser for purposes of rule 206(4)-2. (Posted March 15, 2010)

Question II.10

Q: If an adviser has custody of a client's assets that include a swap agreement with a counterparty and posts funds or securities as collateral in connection with the swap on behalf of the client, must the collateral be maintained with a qualified custodian?

A: Yes. Such collateral must be maintained with a qualified custodian. If the qualified custodian is a related person, the adviser must receive an internal control report from the custodian. In addition, the adviser must undergo a surprise examination unless the custodian is operationally independent. Both the surprise examination, if required, and internal control report must be performed by an accountant that is registered with, and subject to regular inspection by, the PCAOB. (Posted May 20, 2010)

III. Fee Deductions

Question III.1

Q: A client has instructed its custodian to debit the client's account for advisory fees each quarter. The custodian makes all fee calculations, based on the advisory contract. The adviser does not calculate the fee, nor does it send a bill. Does the adviser have custody?

A: If the qualified custodian is not a related person of the adviser, the adviser does not have custody. Under these circumstances, the custodian is acting only as agent for the client, and the adviser does not have access to the client's funds. (Modified May 20, 2010.)

IV. Account Statements; Surprise Examinations

Question IV.1

Q: May account statements be delivered electronically?

A: Yes. Electronic delivery is permissible, if (1) the client has given informed consent to receiving the information electronically; (2) the client can effectively access the electronically delivered information; and (3) evidence of the delivery is received, such as an email return-receipt or other confirmation that the information was accessed. *See Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information; Additional Examples under the Securities Act of 1933, Securities Exchange Act of 1934, and Investment Company Act of 1940, Release No. 33-7288 (May 9, 1996) [61 FR 24644 (May 15, 1996)].* These guidelines are available at www.sec.gov/rules/concept/33-7288.txt.

Advisers whose clients receive electronic statements from qualified custodians must still form a reasonable belief after due inquiry that the clients are receiving those statements. The adviser may satisfy this requirement by, for example, being copied on the email notifications of account statement postings sent to clients in addition to having access to client statements on the custodian's website, although this is not the exclusive means of forming that reasonable belief (footnote 21 of the Adopting Release). (Modified March 5, 2010.)

Question IV.2

Q: Can an adviser voluntarily continue to send its own quarterly account statements to clients **in addition to** the statements that the clients receive directly from qualified custodians?

A: Yes. If an adviser voluntarily sends account statements, it must insert a legend required under paragraph (a)(2) of the rule urging the client to compare information provided in its statements with those from the qualified custodian in account opening notices and subsequent statements sent to the client for whom the adviser opens custodial accounts with the qualified custodian. (Modified March 5, 2010.)

Question IV.3

Redesignated as [Question XVI.4](#).

Question IV.4

Q: Is there an example of a report that may be issued by the independent public accountant performing a surprise examination of the adviser?

A: Yes. As stated within the Commission's Guidance for Accountants (see Release No. IA 2969), the surprise examination is a compliance examination to be conducted in accordance with AICPA attestation standards. The AICPA has issued an illustrative surprise examination report to reflect the reporting specified in the Guidance for Accountants. The illustrative report is available on the AICPA's website at http://www.aicpa.org/InterestAreas/AccountingAndAuditing/Resources/AudAttest/AudAttestGuidance/DownloadableDocuments/Surprise_Exam_Report.pdf.

Additionally, the AICPA published this illustrative surprise examination report in the May 2010 edition of the Audit and Accounting Guide - Investment Companies. (Posted September 9, 2010)

Question IV.5

Q: The Guidance for Accountants (<http://www.sec.gov/rules/interp/2009/ia-2969.pdf>) states that the accountant's surprise examination report must include an opinion as to whether the investment adviser had been complying with rule 204-2(b) since the prior examination date. When an investment adviser becomes subject to the surprise examination requirement for the first time, what period should such opinion cover?

A: The accountant should report on the investment adviser's compliance with rule 204-2(b) for a period beginning no later than the date the adviser became subject to the surprise examination requirement through the examination date. (Posted December 2, 2010)

Question IV.6.A

Q: Who must file Form ADV-E and the certificate of accounting (surprise examination report)?

A: Form ADV-E and the surprise examination report must be filed electronically through IARD by the independent public accountant performing the surprise examination. Paper filings are no longer accepted. (Posted December 2, 2010)

Question IV.6.B

Q: How does the independent public accountant file Form ADV-E and the surprise examination report?

A: This is a two-step process: (1) the adviser must submit a Form ADV-E in IARD that identifies the independent public accountant who will be performing the surprise examination (see the IARD Users Manual on http://www.iard.com/pdf/formADVE_guide.pdf), and (2) the independent public accountant receives an email from IARD providing a unique, secure link which allows the accountant to upload a surprise examination report to IARD (see <http://www.iard.com/pdf/formADV-E.pdf> for instructions). (Posted December 2, 2010)

V. Notice to Clients

Question V.1

Q: An adviser uses three different custodians for one of its clients, and the assets are moved among them depending on the trading in the account. At any given moment, one or two of those custodians might not be holding that client's funds or securities. Must the adviser provide the client with a new notice each time the assets are moved, or can the adviser provide the client with notice at one time advising the client of all three custodians?

A: The adviser can give the client a one-time notice of all three custodians, and is not required to provide a new notice each time the assets move among the three. The purpose of the notice is to tell the client whom to contact to get his assets, if necessary, and this purpose is satisfied even if the client has to contact three custodians. (Posted 2003.)

VI. Pooled Investment Vehicles

Question VI.1

Q: How does an investment adviser to a pooled investment vehicle comply with the custody rule if it does not use the "audit provision"?

A: If the financial statements of the pooled investment vehicle are not audited and distributed to investors in accordance with paragraph (b)(4) of the rule, the exceptions provided in that paragraph will not be available to the adviser. As a consequence, the adviser, among other things, must have a reasonable basis, after due inquiry, for believing that the qualified custodian sends quarterly account statements to each investor in the pool and must obtain an annual surprise examination with respect to the pool's assets. We note that, because the privately offered securities exception provided in paragraph (b)(2) is not available with respect to assets of an unaudited pool, the adviser must maintain privately offered securities owned by the pool with a qualified custodian. (Posted May 20, 2010)

Question VI.2

Q: When a qualified custodian is required to send account statements directly to investors in a pooled investment vehicle, should each account statement be a statement of funds and securities held by the pool and transactions entered into by the pool, or a statement of the investor's ownership interest in the pool (e.g., the investor's ending capital balance in a limited partnership)?

A: Each account statement sent should be a statement of funds and securities held by the pool and transactions entered into by the pool. (Modified May 20, 2010.)

Question VI.3

Q: Should the accountant's confirmation procedures for a surprise examination of a pooled investment vehicle include confirmation with investors of the pooled investment vehicle?

A: Yes. The accountant should obtain confirmation from investors of (i) funds and securities held by the pooled investment vehicle as of the date of the examination and (ii) contributions and withdrawals of funds and securities to and from the pooled investment vehicle by the investor since the date of the last examination. The quarterly account statements required to be sent by the qualified custodian[s] (see also Question VI.2) should provide investors with the information necessary to respond to the confirmation. (Posted May 20, 2010)

Question VI.4

Q: Does each limited partner need to have a separate independent representative or can one independent representative serve for all limited partners?

A: The representative can serve for all limited partners, so long as the representative is, in fact, independent and satisfies the definition in rule 206(4)-2(d)(4). (Modified March 5, 2010.)

Question VI.5

Q: To use the "audit approach" relying on rule 206(4)-2(b)(4), must the financial statements be prepared in accordance with U.S. GAAP?

A: Yes, the financial statements for pooled vehicles must be prepared in accordance with U.S. GAAP in order to meet the requirements of the rule, with some exceptions for non-U.S. funds and non-U.S. advisers.

Pooled vehicles organized outside of the United States, or having a general partner or other manager with a principal place of business outside the United States, may have their financial statements prepared in accordance with accounting standards other than U.S. GAAP so long as they contain information substantially similar to statements prepared in accordance with U.S. GAAP. Any material differences with U.S. GAAP must be reconciled. The Division would not recommend enforcement action if that reconciliation is included only in the financial statements delivered to U.S. persons. See *generally* Goodwin, Proctor & Hoar, SEC Staff Letter, Feb. 28, 1997. The required audit of those financial statements must be by an independent public accountant and meet with requirements of U.S. generally accepted auditing standards ("U.S. GAAS").

In addition, offshore advisers registered with the SEC are not subject to the custody rule, with respect to offshore funds. See ABA Subcommittee on Private Investment Entities, SEC Staff Letter, Aug. 10, 2006 ("ABA Letter"), available at <http://www.sec.gov/divisions/investment/noaction/aba081006.pdf>. The terms "offshore adviser" and "offshore fund" are defined in the ABA Letter. (Modified March 10, 2010.)

Question VI.6

Q: To use the "audit provision" allowed under rule 206(4)-2(b)(4), must the audit meet the requirements of U.S. GAAS?

A: Yes. If the audit does not meet U.S. GAAS requirements, the adviser cannot rely upon the "audit provision." (Modified March 10, 2010.)

Question VI.7

Q: Does a fund of funds have to meet the 120-day deadline for sending out its audited financial statements?

A: The Division has issued a letter indicating that it would not

recommend enforcement action to the Commission if an adviser relying on the "audit provision" for a fund of funds distributes the audited financials to investors within 180 days from the end of the fund of funds' fiscal year. A fund of funds is a pooled investment vehicle that invests 10 percent or more of its total assets in other pooled investment vehicles that are not, and are not advised by, a related person of the pool, its general partner, or its adviser. A "related person" of an adviser includes officers, partners, directors, most employees, and anyone controlled by, controlling or under common control with the adviser. See Adopting Release at footnote 45 and the ABA Letter. (Modified March 5, 2010.)

Question VI.8A

Q: An adviser's client is a pooled investment vehicle that invests in a fund of funds, but the "top tier" pool is not a fund of funds as defined in the ABA Letter because it is affiliated with the fund of funds in which it invests — for example, the top tier pool is a feeder fund in a master-feeder structure where the master fund is a fund of funds. If the top tier pool wishes to rely on the "audit provision," must it distribute its audited financial statements within 120 days of its fiscal year end, or may it use the extended 180-day deadline available to the fund of funds?

A: In these circumstances, the auditors of the top tier pool, like the auditors to the fund of funds, might not be able to complete their work until the audit reports of the funds underlying the fund of funds are available. The Division would not recommend enforcement action for a violation of rule 206(4)-2 against an adviser to a top tier pool that invests 10 percent or more of its total assets in a fund of funds if the adviser distributes the top tier pool's audited financial statements within 180 days of the end of the fiscal year of the fund of funds. (Modified March 5, 2010.)

Question VI.8B

Q: An adviser's client is a "top tier" pooled investment vehicle that invests in one or more funds of funds. Such top tier pool invests 10 percent or more of its total assets in one or more funds of funds, as defined in the ABA Letter, that are not, and are not advised by, a related person of the top tier pool, its general partner, or its adviser. An audit of the top tier pool cannot be completed prior to the completion of the audits of the funds of funds in which it invests, whose advisers have up to 180 days after the end of their fiscal year to distribute audited financial statements. If the adviser to the top tier pool wishes to rely on the "audit provision," when must it distribute its audited financial statements?

A: The Division would not recommend enforcement action to the Commission under rule 206(4)-2 if the audited financial statements of the top tier pool are distributed to pool investors within 260 days of the end of the top tier pool's fiscal year. (Posted April 1, 2011)

Question VI.9

Q: If a pooled investment vehicle is subject to an annual audit and its adviser is relying on the "audit provision" under rule 206(4)-2(b)(4),

would the adviser be in violation of the rule if the pooled vehicle fails to distribute its audited financial statements within 120 days after the end of its fiscal year?

A: The Division would not recommend enforcement action for a violation of rule 206(4)-2 against an adviser that is relying on rule 206(4)-2(b)(4) and that reasonably believed that the pool's audited financial statements would be distributed within the 120-day deadline, but failed to have them distributed in time under certain unforeseeable circumstances. (Modified March 5, 2010.)

Question VI.10

Q: Some registered fund families have organized unregistered money market funds for investment exclusively by their registered investment companies, in compliance with rule 12d1-1 under the Investment Company Act of 1940.² The financial statements of the unregistered money market funds are audited, but are delivered to the registered investment companies, which may be related persons of the adviser. Under rule 206(4)-2(c), sending audited financial statements solely to pooled investment vehicle investors that are themselves pooled investment vehicles and related persons of the adviser does not satisfy the financial statement delivery requirement under rule 206(4)-2(b)(4). Must the financial statements of the unregistered money market funds be delivered to each shareholder in the registered investment companies investing in the unregistered fund?

A: The Division would not recommend enforcement action to the Commission under rule 206(4)-2 if the audited financial statements of the unregistered money market funds are not delivered to the shareholders of the registered investment companies, provided that the financial statements are delivered to each registered investment company's chief compliance officer, audit committee members and the members of the board of directors who are not interested persons of the adviser. (Posted March 5, 2010.)

Question VI.11

Q: Section 206(4)-2(b)(4) provides that an adviser may comply with the rule's requirements with respect to an account of a "limited partnership (or limited liability company, or another type of pooled investment vehicle)" by delivering audited financial statements of the limited partnership to investors. In some cases such pooled investment vehicles are formed where the general partner has only a nominal capital account and there is a single limited partner. Similarly, a limited liability company may have a single member. Is there a minimum number of investors that a limited liability company or other entity must have in order to come within the meaning of section 206(4)-2(b)(4)?

A: No. (Posted March 5, 2010.)

VII. Privately Offered Securities

Question VII.1

Q: If the client is a pooled investment vehicle that does not rely on the "audit provision" under the amended custody rule, may the adviser use the exception for privately offered securities for that client?

A: No. The exception provided under paragraph (b)(2) of the rule is only available for an adviser to a pool that is audited pursuant to rule 206(4)-2(b)(4). (Modified March 5, 2010.)

Question VII.2

Q: The limited partnership an adviser manages does not undergo an annual audit, and the amended custody rule therefore requires that privately offered securities owned by the limited partnership be maintained with qualified custodians. Some of these securities, however, are recorded only on the books of their issuers that are not qualified custodians. May the adviser satisfy this requirement of rule 206(4)-2(a)(1) by keeping the subscription agreement for the security with a qualified custodian or having the custodian act as nominee for the limited partnership?

A: Yes. Under this circumstance, an adviser may satisfy the requirements of rule 206(4)-2(a)(1) by keeping the originally signed subscription agreement (instead of the security itself) with a qualified custodian or having the custodian act as nominee for the limited partnership. (Modified March 5, 2010.)

Question VII.3

Q: When does an adviser have custody when it advises a client with respect to the purchase of privately offered uncertificated securities, *i.e.*, the securities described in paragraph (b)(2)(i) of the rule?

A: Whether an adviser has custody of client funds and securities depends upon whether the adviser directly or indirectly holds the securities or has any authority to possess them. Custody does not turn on whether the securities are maintained with a qualified custodian. Thus, an adviser that is a general partner of a limited partnership or a trustee of a trust would always have custody of such securities held by the partnership or the trust. An adviser that does not have such legal authority to obtain possession of such securities would generally not have custody, for example if the client must sign a subscription agreement to purchase a privately offered security, and the adviser has no authority to transfer or redeem those securities without client consent to the issuer. (Posted March 5, 2010.)

VIII. Independent Representatives

Question VIII.1

Q: If an adviser appoints an independent representative for a client, must the adviser obtain the client's consent?

A: The rule does not address this point. However, an adviser's fiduciary duties, client contract or limited partnership contract may require it to obtain client consent for the appointment. Appointment of a

representative without consent of the client suggests that the representative may be controlled by the adviser and is not truly independent. (Posted 2003.)

Question VIII.2

Q: If an accounting firm acts as the independent auditor (or independent surprise examiner) of an adviser, may the accounting firm also act as the independent representative for the limited partners of a pooled investment vehicle run by the adviser?

A: Likely not. The accounting firm would have to meet the definition of "independent representative" set out in the rule. We note that the concept of independence for purposes of the definition of "independent representative" under the rule is distinct from the concept of independence for purposes of the Commission's auditor independence rules. (Posted 2003.)

Question VIII.3

Q: If an accounting firm acts as the independent auditor of a pooled investment vehicle, may the accounting firm also act as the independent representative for the investors in the pool?

A: Likely not. The accounting firm would have to meet the definition of "independent representative" set out in the amended custody rule. As noted in the previous question, the concept of independence for purposes of the definition of "independent representative" under the amended custody rule is distinct from the concept of independence for purposes of the Commission's auditor independence rules.

In addition, if the audited financial statements are intended to be delivered to the independent representative rather than to the investors in the pooled vehicle, then the accounting firm would be receiving its own audit results; in those circumstances, we believe that the accountant may not be able to act solely in the limited partners' interests. (Posted 2003.)

Question VIII.4

Q: If an adviser is a trustee for a client's trust, can a co trustee be the "independent representative" to receive statements for the trust?

A: The co-trustee can be the independent representative provided it meets the tests for independence set out in the rule. (Posted 2003.)

Question VIII.5

Q: Can someone who is an advisory client of an adviser act as an independent representative for other clients of that adviser?

A: Yes, if it meets the tests for independence set out in the rule. If the client relationship is a "material business relationship" (or the person has another material business relationship) with the advisory firm, the person

will not meet the tests for independence. (Posted 2003.)

IX. Sub-Custodians

Question IX.1

Q: If an adviser that is a qualified custodian uses a sub-custodian (that is also a qualified custodian) to hold some book-entry securities, may the adviser send its advisory clients consolidated account statements that incorporate the sub custodian's account statements, or must the sub-custodian send separate account statements?

A: If the adviser/custodian's account includes the assets maintained with the sub custodian, the adviser/custodian can send a consolidated statement. (Posted 2003.)

X. Auditing Non-Pool Accounts

Question X.1

Q: Can an adviser use the audit approach under the rule with respect to the account of a client that is not a pooled investment vehicle (*e.g.*, an endowment, an individual, or a pension fund)? What if the client co-invests alongside an audited private pool?

A: No. The audit approach is not available if the client is not a pooled investment vehicle; account statements must be sent to the client by a qualified custodian. The answer does not change if the client co-invests alongside an audited pool. (Modified March 5, 2010.)

XI. Balance Sheet

Question XI.1

Q: Under what circumstances must an adviser still provide an audited balance sheet to its advisory clients?

A: Although having custody no longer causes SEC-registered advisers to be subject to the balance sheet requirement, Item 18 of Form ADV Part 2A requires an SEC-registered adviser that receives the prepayment of fees exceeding \$1,200 per client and six or more months in advance to include an audited balance sheet in its brochure to clients from whom the adviser has received such prepayments. (Modified December 2, 2010.)

XII. Trustees

Question XII.1

Q: A related person of an investment adviser (*e.g.*, an officer or director of the adviser) may act as the trustee of the participant-directed defined contribution plan established for the benefit of the adviser's employees. As trustee of the plan, the related person selects the service providers for the plan, such as an administrator and may select the investment options available under the plan, *e.g.*, mutual funds. Must the adviser treat the

assets of the plan as client assets of which it has custody?

A: The Division will not recommend enforcement action to the Commission against an investment adviser that does not treat the assets of a participant-directed defined contribution plan established for the benefit of adviser's employees as those of a client of which it has custody in these circumstances solely because a related person of the adviser is trustee which may select service providers and investment options for the plan, provided that (i) neither the investment adviser nor a related person otherwise acts as an investment adviser to the plan or any investment option available under the plan and (ii) the investment adviser and the related person trustee are, to the extent applicable, in compliance with the Employee Retirement Income Security Act of 1974 (ERISA) and rules and regulations issued thereunder with respect to the plan. (Posted March 5, 2010.)

Question XII.2

Q: In some trusts, co-trustees are required either by law or the trust instrument in order to protect the trust beneficiaries from the actions of a single trustee acting alone. In these situations, no co-trustee is able to withdraw assets without the prior written consent of the other co-trustee(s). Would an adviser acting as trustee in this type of arrangement have custody of the trust's assets for purposes of the rule?

A: The Division would not consider an adviser to have custody in such circumstances, provided that (i) the trust has a co-trustee that is a bank or a trust company that meets the definition of a qualified custodian under rule 206(4)-2(d)(6) and is not a related person of the adviser, (ii) the qualified custodian delivers account statements directly to each co-trustee that is not itself the custodian, and (iii) under the trust instrument or by law the withdrawal of any assets of the trust by the adviser requires the prior written consent of all of its co-trustee(s). (Posted March 10, 2010.)

Question XII.3

Q: For estate planning and other purposes, some people form revocable grantor trusts. With these trusts, the person who establishes and funds the trusts (the grantor) may revoke or modify the trust at will, including changing beneficiaries. If an adviser is co-trustee along with the grantor, would the adviser have custody of the trust's assets for purposes of the rule?

A: The Division would not consider an adviser to have custody under rule 206(4)-2 in such circumstances if (i) the adviser is prohibited by the trust instrument or by law from withdrawing any assets from the trust without the prior written consent of all of its co-trustees, (ii) each grantor who has contributed assets to the trust acts as co-trustee, and (iii) the qualified custodian delivers account statements directly to each co-trustee. (Posted March 10, 2010.)

XIII. Internal Control Report

Question XIII.1

Q: Is an adviser required to undergo a surprise examination and receive an internal control report from a related person that has custody of client assets, but does not serve as a "qualified custodian" for purposes of the rule of those assets?

A: An adviser must obtain an internal control report only if the adviser or its related person is acting as a qualified custodian of client assets. See Rule 206(4)-2(a)(6). For example, an adviser to a private fund the general partner of which is a related person of the adviser would not need to receive an internal control report from (i) the general partner if the general partner is not serving as a qualified custodian and (ii) the prime broker that is serving as qualified custodian but is not a related person of the adviser. However, the adviser would be required to obtain a surprise examination unless the fund qualified for the audit provision. See Rule 206(4)-2(b)(4). (Posted March 10, 2010)

Question XIII.2

Q: Rule 206(4)-2(b)(6) provides an exception to the surprise examination requirement to an adviser when a related person is acting as qualified custodian for the adviser's clients if the related person is "operationally independent" (as defined in paragraph (d)(5)) from the adviser. In such case, must the adviser receive an internal control report from the related person?

A: Yes. An adviser must receive an internal control report from the related person that acts as a qualified custodian for the adviser's clients, even if that person is operationally independent. (Posted March 10, 2010)

Question XIII.3

Q: Within the Guidance for Accountants contained in Release IA-2969, the Commission indicated that two types of reports issued under the AICPA professional standards (Type II SAS 70 or AT 601 compliance attestation) would be sufficient to satisfy the requirements of the internal control report. Are there other report formats that can be used to satisfy the custody rule?

A: Yes. The AICPA recently developed a report that under AT 101, Attest Engagements, of the AICPA's professional standards that would be acceptable under the custody rule. An illustrative report is currently available on the AICPA's website at http://www.aicpa.org/InterestAreas/AccountingAndAuditing/Community/InvestmentCompanies/DownloadableDocuments/Custody_report_September_1final.pdf. (Posted September 9, 2010)

XIV. Introducing Broker

Question XIV.1

Q: An investment adviser may also act as an introducing broker or have a related person acting as an introducing broker for its clients. Introducing brokers may have a variety of different relationships with a carrying broker with respect to matters such as the handling of customer

funds and securities and sending customer account statements. In some cases, an introducing broker may maintain some client funds or securities, on a temporary and/or on-going basis (*e.g.*, introducing brokers subject to paragraph (a)(2)(iv) of Rule 15c3-1 under the Securities Exchange Act of 1934). Is the introducing broker subject to the internal control report requirement in these circumstances?

A: Yes. An internal control report is required whenever an adviser or its related person is acting as a qualified custodian for client assets. (Posted March 10, 2010)

Question XIV.2

Q: If an introducing broker that is also an adviser or an adviser's related person is not acting as a qualified custodian under the rule for funds or securities of the adviser's clients, is the introducing broker subject to the internal control report requirement?

A: No. We would not consider an introducing broker to be acting as a qualified custodian under the rule if all client funds and securities are maintained with a carrying broker (which is not a related person of the adviser). Such an introducing broker must not receive client funds or securities other than checks drawn by clients and made payable to third parties such as the carrying broker. (Posted March 10, 2010)

Question XIV.3

Q: Does an adviser that meets the conditions above in Question XIV. 2 have custody of client funds or securities?

A: It depends. An adviser or its related person may have custody of client funds and securities without maintaining those funds or securities as qualified custodian for purposes of paragraph (a)(6) of the rule. For example, if the adviser or its related person has authority to withdraw client funds or securities maintained by the carrying broker, the adviser has custody of those assets. In that case, the adviser would be subject to all the applicable requirements of the rule, including the surprise examination requirement under paragraph (a)(4) of the rule. (Posted March 10, 2010)

XV. Transfer Agents

Question XV.1

Q: A transfer agent to a mutual fund is permitted to be used in lieu of a qualified custodian with respect to that mutual fund's shares under rule 206(4)-2(b)(1). If the mutual fund transfer agent is a related person of the adviser, must the adviser undergo a surprise examination and receive an internal control report from the transfer agent?

A: Yes. (Posted March 15, 2010)

XVI. Auditor Independence

Question XVI.1

Q. Pursuant to the custody rule, an accountant performing a surprise examination must meet the standards of independence described in rules 2-01(b) and (c) of Regulation S-X. Rule 2-01(b) provides the general standard of independence. Rule 2-01(c) provides a non-exclusive list of circumstances, including specific relationships and services, which would be inconsistent with the general standard. How should an accountant who performs a surprise examination under the custody rule consider the propriety of non-audit services specified in rule 2-01(c)(4)(i)-(v) if such services are not subject to the accountant's procedures during the surprise examination?

A. When engaged to issue an audit or attest report to satisfy a requirement in the custody rule, the accountant should consider the application of the general standard of independence to such engagements. The Commission's 2003 adopting release (Release No. 33-8183 (January 28, 2003), *Strengthening the Commission's Requirements Regarding Auditor Independence*), states that there is a rebuttable presumption that certain prohibited non-audit services (e.g., bookkeeping, financial information systems design and implementation) will be subject to audit procedures during an audit of the audit client's financial statements. Rule 2-01(c)(4) provides that these non-audit services are prohibited unless "it is reasonable to conclude that the results of these services will not be subject to audit procedures during an audit of the audit client's financial statements." Therefore, it is the staff's position that, subject to Rule 2-01(b) of Regulation S-X, an accountant performing a surprise examination under the custody rule would be able to perform certain non-audit services as long as it is reasonable to conclude that: (1) the results of the non-audit service will not be subject to attest procedures which might be performed during the surprise examination; and (2) the results of the non-audit service would not be subject to audit procedures if the accountant had been engaged to perform a financial statement audit. For example, if a pooled investment vehicle is included in the scope of an adviser's surprise examination under the custody rule, the accountant performing the surprise examination would be prohibited from compiling the pooled investment vehicle's financial statements. (Posted December 13, 2011.)

Question XVI.2

Q. The custody rule requires that an accountant performing a surprise examination of an adviser, preparing an internal control report of an adviser's related person qualified custodian or performing an audit of a pooled investment vehicle's financial statements for purposes of the adviser's compliance with the custody rule must be an "independent public accountant" and thus comply with the applicable provisions of rule 2-01 of Regulation S-X, including the term "audit and professional engagement period" as defined in rule 2-01(f)(5). How should the term "audit and professional engagement period" be applied for accountants performing surprise examinations, preparing internal control reports, and auditing pooled investment vehicles' financial statements pursuant to the custody rule?

A. Under the provisions of rule 2-01 of Regulation S-X, for a surprise examination, the audit and professional engagement period begins the

earliest of: (1) the date the accountant signs an initial written agreement to perform the surprise examination as required by rule 206(4)-2(a)(4); (2) the date the accountant begins attest procedures; or (3) the beginning of the period subject to the surprise examination.

For the preparation of an internal control report or an audit of a pooled investment vehicle's financial statements, the audit and professional engagement period begins the earliest of: (1) the date the accountant signs an engagement letter or other agreement to prepare the qualified custodian's internal control report or audit the pooled investment vehicle's financial statements; (2) the date the accountant begins attest or audit procedures; or (3) the beginning of the period covered by the internal control report or pooled investment vehicle's financial statements.

In general, the audit and professional engagement period for the surprise examination ends when the accountant notifies the Commission of its termination pursuant to rule 206(4)-2(a)(4)(iii). While neither the accountant nor the audit client is required to notify the Commission of the termination of an engagement to prepare an internal control report or to audit a pooled investment vehicle's financial statements under the custody rule, consistent with the provisions of rule 2-01 of Regulation S-X, the audit and professional engagement period for these engagements ends when the audit client or the accountant, as applicable, notifies the other that the client is no longer the accountant's client for such engagement. See also Question XVI.3. (Posted December 13, 2011.)

Question XVI.3

Q. The definition of "audit and professional engagement period" in rule 2-01(f)(5) of Regulation S-X provides that the professional engagement period ends when the audit client or the accountant notifies the Commission that the client is no longer that accountant's audit client. How is the end date affected if the notification of termination of the engagement period is not effective until some future date or event? For example, where the client notifies the accountant that the relationship terminates with the conclusion of the engagement for the current fiscal year, when does the "audit and professional engagement period" end?

A. In this situation (absent any subsequent notice of termination), the professional engagement period ends with the issuance of the accountant's report for that particular engagement. It is important to note, however, that even where the termination of the professional engagement period is not effective until a future date or event, the obligation to make a filing under Commission regulations (e.g., on Form 8-K, Form ADV-E, or pursuant to rule 17a-5 of the Securities Exchange Act of 1934, as applicable) upon notification is not affected. (Posted December 13, 2011.)

Question XVI.4

Q. If an accounting firm regularly audits an advisory firm's books or the books of a limited partnership run by the advisory firm, can that accounting firm also be an "independent" public accountant for purposes of performing the surprise examination under the custody rule?

A. Yes, provided that the accounting firm meets the definition of "independent public accountant" in section (d)(3) of the rule. (Modified March 5, 2010.)

Endnotes

¹ See *also* Section II.A. of the 2003 Release. An adviser that is also a qualified custodian would not necessarily have violated the rule if it places the securities in an appropriate account and identifies them in quarterly statements to the client.

² Pursuant to rule 12d1-1 under the Investment Company Act, a registered investment company may invest in an affiliated unregistered money market fund.

http://www.sec.gov/divisions/investment/custody_faq_030510.htm

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Modified: 09/03/2013

From: Gavin Watson <[REDACTED]>
Sent: Thursday, April 14, 2011 10:41 AM
To: Wells, Jonathan M.; David LaRocca
Cc: Christopher Kelly
Subject: O2HR

Jonathan,

Thanks for the help yesterday. I just brought these issues up with Steven and he is of the understanding that you are currently doing title searches on the properties held by SDH. He also believes that you are figuring out which properties have liens or mortgages attached to them.

Is this your understanding? If so, what is the timing?

Thanks.

Gavin Watson
Sands Brothers Asset Management, LLC

[REDACTED]

[REDACTED]

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motion or marketing of the transactions described herein (or in any such opinion of counsel); and (iii) each taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

From: Christopher Kelly [REDACTED]
Sent: Monday, May 16, 2011 12:03 PM
To: Sal Vicari
Cc: David LaRocca
Subject: FW: Appraisal of Smith Mountain Dock & Lodge - Genesis and Sands Brothers Venture - O2HR
Attachments: 11-074B SMD&L - On Site Drainfields Report Complete.pdf

Sal

Attached is the reappraisal of the Smith Mountain Lake property, without taking into account the value of the drainage parcel, which serves as collateral for the Genesis and Sands Brothers Venture loans.

On pdf page 66 you will see the estimated value of the drainage parcel, at \$1,440,000, based on the difference between the original Smith Mountain Lake appraisal, and the current appraisal attached.

This should provide sufficient value for the O2HR loans to Genesis and Sands Brothers Venture.

~~The reappraisal of the Legacy golf course will also be provided shortly.~~

Do you need anything else for Arx?

Regards

Christopher Kelly
Chief Operating Officer and Chief Compliance Officer
Sands Brothers Asset Management, LLC

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] 0 Fax
[REDACTED]

From: Jackie Moore [mailto:jmoore@millerlong.com]
Sent: Friday, May 13, 2011 10:43 AM
To: Christopher Kelly
Subject: Appraisal of Smith Mountain Dock & Lodge

Attached is a PDF copy of the appraisal report of Smith Mountain Dock & Lodge and the invoice. If you have any problems or questions, please give us a call.

Jackie Moore
Miller, Long & Associates, Inc.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

jmoore@millerlong.com


From: David LaRocca
Sent: Thursday, June 28, 2012 12:28 PM
To: John Lanser III

O2HR is fine now.

David P. LaRocca, CPA

Cornick Garber Sandler
Certified Public Accountants & Advisors



 Think before printing this email – you could save a tree!

From: Gavin Watson [REDACTED]
Sent: Wednesday, April 24, 2013 9:48 AM
To: Salvatore Vicari; 'John Lanser'; 'Douglas J. Bisio'; Christopher Kelly
Cc: David LaRocca; Lee Tu; Jeff Umansky
Subject: Re: valuations
Attachments: image001.png; image002.jpg; image003.jpg

Answers to your questions in red below.

Gavin Watson

Portfolio Manager

Sands Brothers Asset Management, LLC

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: Sal Vicari <[REDACTED]>
Date: Tuesday, April 23, 2013 7:07 PM
To: Gavin Watson [REDACTED]

Subject: valuations

Hi Gavin-

I will be in Greenwich tomorrow working on the audit. Please let me know what time you are available for a call to discuss a few questions with the recently completed valuations.

I checked the drop box and noted the updates for Fur Trade and Parkland.....I was not able to reference the values to the internal books that were prepared by ODB. Also there are numerous changes in the word document that were not accepted.....is this still waiting for final review and approval?? NO, IT IS FINAL. FOR SOME REASON, IT KEPT OPENING UP AS A MARKED UP COPY INSTEAD OF FINAL. I THINK I HAVE FIXED THIS.

Were you able to confirm the values used in the valuations agree to what is reported in the books. I did note that Gourmet did not agree by a total of \$500k and that Amelio also needs to change for the settlement agreement. AS NOTED PREVIOUSLY, THE ODB NUMBERS ARE PRELIMINARY ESTIMATES AND MAY NEED ADJUSTMENTS AS WE GO THROUGH THE PROCESS. GOURMET AND AMELIO ARE TWO THAT WILL NEED TO BE ADJUSTED IN THE FINAL BOOKS BUT THERE MAY BE OTHER ADJUSTMENTS FORTHCOMING.

I also wanted to confirm that the following valuations are still a work in process:


1. O2HR WAITING ON KY APPRAISAL
2. Nascent (Jeff had sent a previous email that it was in the drop-box, however it's not included) IT IS IN THE DROPBOX AND HAS BEEN FOR OVER A WEEK. I AM UNCERTAIN AS TO WHY IT IS NOT SHOWING UP ON YOUR SCREEN. IF YOU CANNOT FIND IT, I WILL EMAIL YOU THE PACKAGE.
3. Progressive WORKING WITH CANTOR FITZGERALD TO GET AN UPDATED VALUATION ON OUR POLICIES. WORKING WITH OUR COUNSEL TO COMPILE FULL LIST OF POLICIES THAT WE BELIEVE WE HAVE THE RIGHT TO.
4. Emistor WAITING ON FINANCIALS
5. Decision Point I BELIEV YOU ARE REFERRING TO A WARRANT VALUE. IF THAT IS THE CASE, I WILL HAVE THAT TO YOU TODAY.

Thanks,
Sal

Salvatore Vicari, CPA

Cornick Garber Sandler
Certified Public Accountants & Advisors

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purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein.

From: Gavin Watson [REDACTED]
Sent: Monday, May 13, 2013 4:52 PM
To: Salvatore Vicari; David LaRocca
Cc: Christopher Kelly; Douglas Bisio; John Lanser
Subject: Valuations

Please give us an update when you have a chance on remaining valuation issues. I believe only O2HR and Progressive need further discussion/review.

I am just waiting on comments regarding the Progressive valuation from our internal team. That valuation should be posted later today or early tomorrow. I will send out an email when it has been uploaded to the DropBox. Thanks.

Gavin Watson
Portfolio Manager
Sands Brothers Asset Management, LLC

[REDACTED]
[REDACTED] [REDACTED] [REDACTED]

[REDACTED]

From: Salvatore Vicari
Sent: Monday, October 15, 2012 3:17 PM
To: [REDACTED]
Cc: David LaRocca
Subject: RE: Progressive

Steven-

I also want to discuss the value of Progressive.....

Since there was a subsequent write-down in March 2012, it makes more sense that the value should not be greater than the current value at March 2012.

The write-up was approximately \$500k in December 2011 with a subsequent write-down.

We can discuss further on the call.

Thanks again,
Sal

From: Salvatore Vicari
Sent: Monday, October 15, 2012 3:04 PM
To: [REDACTED]
Cc: David LaRocca
Subject: Progressive

Hi Steven-

David and I tried to call you back regarding Progressive.

We wanted to have a follow-up to our previous discussion.

A few comments:

1. How do we confirm that there are no other lien holders and that GMP has a first on the 22 policies.
2. Confirm the premiums are paid by Absolute and CMS.

Can we also inquire with the attorney to send us a memo on the Progressive case.....it is a bit complicated with GMP now as an equity holder and the various other equity holders.


Thanks,
Sal

Salvatore Vicari, CPA

Cornick Garber Sandler
Certified Public Accountants & Advisors



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From: Douglas J. Bisio [REDACTED]
Sent: Tuesday, October 16, 2012 3:04 PM
To: Jay Monaghan; Jason Fastiggi; OPSChennai [REDACTED]
Cc: [REDACTED]
Subject: RE: Genesis I/II Progressive Captial_2011/2012 Adjustments
Importance: High

One question I would like to discuss later is how do I estimate September's performance for the March reversal of the Progressive write-down?

For example in GMP I the position was written-down by \$455k in March, but that is now adjusted to zero post audit. Do I include that amount back into income for the purposes of calculating estimated LP returns and GP incentive accruals?

Douglas J. Bisio
President
Greenwich Fund Services

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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From: Douglas J. Bisio
Sent: Tuesday, October 16, 2012 1:00 PM
To: Jay Monaghan; Jason Fastiggi; OPSChennai; [REDACTED]
Cc: Salvatore Vicari; Douglas J. Bisio; [REDACTED]; John Lanser III
Subject: Genesis I/II - Progressive Captial_2011/2012 Adjustments
Importance: High

Jay M,

Per our conversation SBAM will be revising the December 2011 write-up and March 2012 write-down for Progressive Capital in Genesis I and II. This is the second audit adjustment for these Funds in 2011.

Originally Progressive was written up as follows in December 2011 and subsequently written down in March of the following year for the same amount:

Date	Fund	Pre Audit Valuation Change
12/2011	GMP I:	+455,023 - Write up
03/2012	GMP I:	-455,023 - Write down
12/2011	GMP II:	+ 44,977 - Write up
03/2012	GMP II:	- 44,977 - Write down

The audit adjustments are as follows:

Date	Fund	Post Audit Adjustment
12/2011	GMP I:	No Change
12/2011	GMP II:	No Change
03/2012	GMP I:	No Change
03/2012	GMP II:	No Change

Progressive will not be written up EOY 2011 and will not be written down Q1 2012 (by the same amount). This will result in GMP I net income to swing to negative for all of 2011. Also, both GMP I and II should have increased returns in 2012 due to the removal of the negative write-down in March.

The auditors have requested updated Statements of Operations and Financial Highlights for 2011. There will also be allocation adjustments for EOY 2011 as well as 2012.

Also, we are no longer writing down Progressive in September as my email yesterday stated. I will send an updated email with the revised daily sheets shortly.

Douglas J. Bisio
 President
 Greenwich Fund Services
 15 Valley Drive
 Greenwich CT 06831

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From: Gavin Watson [REDACTED]
Sent: Wednesday, April 24, 2013 9:48 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: Re: valuations
Attachments: image001.png; image002.jpg; image003.jpg

Answers to your questions in red below.

Gavin Watson

Portfolio Manager

Sands Brothers Asset Management, LLC

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: Sal Vicari [REDACTED]
Date: Tuesday, April 23, 2013 7:07 PM
To: Gavin Watson [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
Subject: valuations

Hi Gavin-

I will be in Greenwich tomorrow working on the audit. Please let me know what time you are available for a call to discuss a few questions with the recently completed valuations.

I checked the drop box and noted the updates for Fur Trade and Parkland.....I was not able to reference the values to the internal books that were prepared by ODB. Also there are numerous changes in the word document that were not accepted.....is this still waiting for final review and approval?? NO, IT IS FINAL. FOR SOME REASON, IT KEPT OPENING UP AS A MARKED UP COPY INSTEAD OF FINAL. I THINK I HAVE FIXED THIS.

Were you able to confirm the values used in the valuations agree to what is reported in the books. I did note that Gourmet did not agree by a total of \$500k and that Amelio also needs to change for the settlement agreement. AS NOTED PREVIOUSLY, THE ODB NUMBERS ARE PRELIMINARY ESTIMATES AND MAY NEED ADJUSTMENTS AS WE GO THROUGH THE PROCESS. GOURMET AND AMELIO ARE TWO THAT WILL NEED TO BE ADJUSTED IN THE FINAL BOOKS BUT THERE MAY BE OTHER ADJUSTMENTS FORTHCOMING.

I also wanted to confirm that the following valuations are still a work in process:

1. O2HR WAITING ON KY APPRAISAL
2. Nascent (Jeff had sent a previous email that it was in the drop-box, however it's not included) IT IS IN THE DROPBOX AND HAS BEEN FOR OVER A WEEK. I AM UNCERTAIN AS TO WHY IT IS NOT SHOWING UP ON YOUR SCREEN. IF YOU CANNOT FIND IT, I WILL EMAIL YOU THE PACKAGE.
3. Progressive WORKING WITH CANTOR FITZGERALD TO GET AN UPDATED VALUATION ON OUR POLICIES. WORKING WITH OUR COUNSEL TO COMPILE FULL LIST OF POLICIES THAT WE BELIEVE WE HAVE THE RIGHT TO.
4. Emistor WAITING ON FINANCIALS
5. Decision Point I BELIEV YOU ARE REFERRING TO A WARRANT VALUE. IF THAT IS THE CASE, I WILL HAVE THAT TO YOU TODAY.

Thanks,
Sal

Salvatore Vicari, CPA

Cornick Garber Sandler
Certified Public Accountants & Advisors



Think before printing this email -- you could save a tree!

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purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein.

From: Gavin Watson [REDACTED]
Sent: Friday, May 03, 2013 12:08 PM
To: Salvatore Vicari; David LaRocca
Cc: Jeff Umansky; Douglas Bisio; John Lanser; Christopher Kelly
Subject: MD

Sal/David,

The dropbox has been updated with the photos of the MD storefronts and main warehouse/storefront. Let me know if this closes that one out.

O2HR will be completed within the next few hours. Nascent/Nery's we are waiting on deposition docs and will hopefully have those today as well.

Progressive is in progress. I have spoken to the Cantor folks and they will hopefully have a valuation on the portfolio to us by next week.

Gavin Watson
Portfolio Manager
Sands Brothers Asset Management, LLC

[REDACTED]

[REDACTED]

From: Gavin Watson [REDACTED]
Sent: Monday, May 13, 2013 4:52 PM
To: Salvatore Vicari; David LaRocca
Cc: Christopher Kelly; Douglas Bisio; John Lanser
Subject: Valuations

Please give us an update when you have a chance on remaining valuation issues. I believe only O2HR and Progressive need further discussion/review.

I am just waiting on comments regarding the Progressive valuation from our internal team. That valuation should be posted later today or early tomorrow. I will send out an email when it has been uploaded to the DropBox. Thanks.

Gavin Watson
Portfolio Manager
Sands Brothers Asset Management, LLC
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

From: Gavin Watson [REDACTED]
Sent: Tuesday, May 01, 2012 11:11 AM
To: Salvatore Vicari; David LaRocca
Cc: Christopher Kelly; John Lanser III; Douglas J. Bisio
Subject: FW: Any luck?
Attachments: Trinity Appraisal 9-09.pdf

Sal/David,

Please see attached appraisal on Trinity. I hope that this is helpful.

Gavin Watson
Sands Brothers Asset Management, LLC

[REDACTED]

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From: Jim Hunter [mailto: [REDACTED]]
Sent: Tuesday, May 01, 2012 11:05 AM
To: Gavin Watson
Subject: RE: Any luck?

Here you go. Call if you have any questions on this. I still need to pay them for it. Gee wrote a check and it bounced. Go figure.

Jim Hunter
Chief Operating Officer
Trinity Cable

[REDACTED]
[REDACTED]

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From: Gavin Watson [[REDACTED]]
Sent: Monday, April 30, 2012 4:05 PM
To: Jim Hunter
Subject: RE: Any luck?

OK. Thanks. Appreciate it.

Gavin Watson
Sands Brothers Asset Management, LLC

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

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From: Jim Hunter [REDACTED]
Sent: Monday, April 30, 2012 4:58 PM
To: Gavin Watson
Subject: RE: Any luck?

I will continue to look for this. I spoke with a friend who was involved in a project when I sent the last appraisal to him back in 09. He said he is sure he has it and will look for it when he gets home. I am also going to look on a old drive I have of backups.

Jim Hunter
Chief Operating Officer
Trinity Cable
[REDACTED]
[REDACTED]

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From: Gavin Watson [REDACTED]
Sent: Monday, April 30, 2012 3:18 PM
To: Jim Hunter
Subject: RE: Any luck?

OK. Thanks.

Gavin Watson
Sands Brothers Asset Management, LLC
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

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From: Jim Hunter [REDACTED]
Sent: Monday, April 30, 2012 4:18 PM
To: Gavin Watson
Subject: RE: Any luck?

Still digging man.

Jim Hunter
Chief Operating Officer
Trinity Cable

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From: Gavin Watson [REDACTED]
Sent: Monday, April 30, 2012 3:17 PM
To: Jim Hunter
Subject: Any luck?

Were you able to find the appraisal we spoke of?

Gavin Watson
Sands Brothers Asset Management, LLC

[REDACTED]

[REDACTED]

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From: Gavin Watson <[REDACTED]>
Sent: Monday, July 09, 2012 1:15 PM
To: Christopher Kelly; Douglas J. Bisio; John Lanser III; Salvatore Vicari; David LaRocca
Subject: FW: followup
Attachments: Trinity communications Jasper TN Final 6.2.12.docx

Please see attached and below. Thanks.

Gavin Watson
Sands Brothers Asset Management, LLC

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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From: [REDACTED] [mailto:[REDACTED]]
Sent: Monday, July 09, 2012 1:08 PM

To: Gavin Watson
Subject: Fw: followup

Here you are. I see some things in it that I need to talk with them over but this should get you what you need.

Sent from my Verizon Wireless Droid

-----Original message-----

From: "Milligan, Dan" <[REDACTED]>

Sent: Mon, Jul 9, 2012 15:31:08 GMT+00:00

Subject: RE: followup

Good morning Jim,

Attached is the evaluation of the Trinity CATV system located in the Jasper/South Pittsburg, TN area. By using information provided during my visit on 6/26/12 and from a past evaluation of the system I believe we have a fair assessment of the current Trinity CATV system.

Let me know if you have any questions after you have had a chance to look over the document.

I look forward to assisting you with any future needs you may have.

Best Regards,
Dan M

*Dan Milligan
Engineering Associates, Inc.*

From: Jim Hunter <[REDACTED]>
Sent: Friday, July 06, 2012 5:06 PM
To: Milligan, Dan
Subject: RE: followup

Dan,

How's the report coming?

Jim Hunter
Chief Operating Officer
Trinity Cable

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From: Milligan, Dan [REDACTED]
Sent: Monday, July 02, 2012 1:08 PM
To: Jim Hunter
Subject: RE: followup

Jim, I got one more question, how many subs do you have on the FTTH?

From: Jim Hunter [REDACTED]
Sent: Monday, July 02, 2012 1:34 PM
To: Milligan, Dan
Subject: RE: followup

I don't have the invoices readily available however we have approx. 850K in Aurora equipment and approx. 875K in ARRIS equipment.

Jim Hunter
Chief Operating Officer
Trinity Cable

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From: Milligan, Dan [REDACTED]
Sent: Monday, July 02, 2012 12:05 PM
To: Jim Hunter
Subject: RE: followup

Thxs

From: Jim Hunter [REDACTED]
Sent: Monday, July 02, 2012 1:04 PM

To: Milligan, Dan
Subject: RE: followup

Yes it is. It is Fiber Deep (Node +0) and the ARRIS is FTTH.

Jim Hunter
Chief Operating Officer
Trinity Cable
[REDACTED]
[REDACTED]

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From: Milligan, Dan [REDACTED]
Sent: Monday, July 02, 2012 11:58 AM
To: Jim Hunter
Subject: RE: followup

So does the AURORA equipment used with the HFC plant?

From: Jim Hunter [REDACTED]
Sent: Monday, July 02, 2012 12:11 PM
To: Milligan, Dan
Subject: RE: followup

	Description	Customer Nam
1505978	POWER SUPPLY AC/DC 15Vo 300mA F-CONN FTTMAX 1000 RfOG ONU	ADAMS GLOBAL COMMUNICATIONS
FTTM10J-A2-JBAS-00	FTTM1000 42/54 1611NM SC/APC ONU ONLY	ADAMS GLOBAL COMMUNICATIONS
1505979	SC/APC TO SC/APC JUMPER/JUMPER FIBER 1 METER YELLOW CORDAGE	ADAMS GLOBAL COMMUNICATIONS
1505980	SC/APC TO SC/APC JUMPER/JUMPER FIBER 10 METER YELLOW CORDAGE	ADAMS GLOBAL COMMUNICATIONS
C2-MW01-D01-08-S-A	C2-MW01-D01-08-S-A: CORWAVE II 1550 FWD Tx 01 SC/APC AC PS	ADAMS GLOBAL COMMUNICATIONS
C2-MW02-D02-08-S-A	C2-MW02-D02-08-S-A: CORWAVE II 1550 FWD Tx 02 SC/APC AC PS	ADAMS GLOBAL COMMUNICATIONS
C2-MW03-D03-08-S-A	C2-MW03-D03-08-S-A: CORWAVE II 1550 FWD Tx 03 SC/APC AC PS	ADAMS GLOBAL COMMUNICATIONS
CHP-D1RRX-S	CHP-D1RRX-S: DIGITAL RETURN RECEIVER REAR FIBER TWO RF OUTPU	ADAMS GLOBAL COMMUNICATIONS
CHP-EDFA-HG-20-1-S	CHP-EDFA-HG-20-1-S: 1 OUTPUT 1530-1562nm HIGH INPUT POWER	ADAMS GLOBAL COMMUNICATIONS
OCRD04M0000P1	OCRD04M0000P1: BI-DIRECTIONAL OPTICAL PASSIVE 1550 LGX	ADAMS GLOBAL

		COMMUNICATIONS
ODY04M6FG6F1	ODY04M6FG6F1: CORWAVE II DEMUX WAVELENGTHS 4 LGX SC/APC	ADAMS GLOBAL COMMUNICATIONS
ODY04T6FB6F6B00	ODY04T6FB6F6B00: CORWAVE II DEMUX 4 WGTHS TYCO TRAY	ADAMS GLOBAL COMMUNICATIONS
OMY04M6FB6F1	OMY04M6FB6F1: CORWAVE II MUX 4 WGTHS LGX SC/APC	ADAMS GLOBAL COMMUNICATIONS
OMY04T6FG6F6B00	OMY04T6FG6F6B00: CORWAVE II MUX 4 RTN ONLY TYCO FIBER TRAY	ADAMS GLOBAL COMMUNICATIONS
TM41A0A0002&0001	TM41A0A0002-G6BDG6BD-G6BD0000-50 EDFA ONLY HFH	ADAMS GLOBAL COMMUNICATIONS
TM41B0A1111&0002	TM41B0A1111-G5B40000-R6R60000-50 REPEATER HFH	ADAMS GLOBAL COMMUNICATIONS
TM41B0A1111&0003	TM41B0A1111-G5B40000-R7R70000-50 REPEATER HFH	ADAMS GLOBAL COMMUNICATIONS
TM41B0A1111&0004	TM41B0A1111-G5B40000-R8R80000-50 REPEATER HFH	ADAMS GLOBAL COMMUNICATIONS

Above is the ARRIS equipment purchased and added since the last appraisal. The Aurora equipment was on the initial appraisal. What are your questions on it?

Jim Hunter
Chief Operating Officer
Trinity Cable

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From: Milligan, Dan [REDACTED]
Sent: Monday, July 02, 2012 7:51 AM
To: [REDACTED]
Cc: Brewer, Tracey
Subject: followup

Good morning Jim,

Tried a couple times last week to get a hold of you to clear up a couple of questions. The pictures I took of the added F/O equipment from ARRIS and AURORA did not give me enough detail to ID the modules being used in the chassis.

Could you supply me with that info?

Once I have that I should be able to get the new evaluation to you first thing tomorrow.

Sorry for the delay.
Thxs,
Dan M

Dan Milligan
Engineering Associates, Inc.



From: Jim Hunter [REDACTED]
Sent: Friday, May 03, 2013 6:31 PM
To: David LaRocca
Cc: Gavin Watson
Subject: FW: Investment Confirmation
Attachments: SBVC GMP Trinity 12312012 Investemnt confirmation.pdf

Jim Hunter
Chief Operating Officer
Trinity Cable

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From: Laura Young [REDACTED]
Sent: Friday, May 03, 2013 10:15 AM
To: 'Jim Hunter'
Subject: RE: Investment Confirmation

Jim,

My apologies in the time it took. I had some searching to do in my e-mails to find the information.

I have answered what I could. Some of the information is not available to me, and I am not sure if payment terms, etc. changed when things changed from the bankruptcy. The investment dates I gave was after reorganization, which I thought most appropriate. I thought it best to fill in the information in a way in which you could edit (delete and re-enter) rather than hand-write in the information. You may know the answer to the items that are blank.

Regards,

Laura G. Young
Trinity Cable, LLC

From: Jim Hunter [REDACTED]
Sent: Monday, April 29, 2013 5:14 PM

To: Laura Young
Subject: FW: Investment Confirmation

Laura,

Can you complete this and forward back to me.

Thanks

Jim Hunter
Chief Operating Officer
Trinity Cable

[REDACTED]
[REDACTED]

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From: David LaRocca [REDACTED]
Sent: Monday, April 29, 2013 4:07 PM
To: [REDACTED]
Cc: 'Gavin Watson'; 'John Lanser III'
Subject: FW: Investment Confirmation

James,

Wanted to follow up on the attached email send February 20th, 2013. If you could please reply to the attached confirmation at your earliest convenience I would appreciate it.


Thank you.

David.

David P. LaRocca, CPA

Cornick Garber Sandler
Certified Public Accountants & Advisors

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

 Think before printing this email – you could save a tree!

From: David LaRocca
Sent: 02/20/2013 12:12 PM
To: [REDACTED]

Cc: 'Gavin Watson'; 'John Lanser III'
Subject: Investment Confirmation

James,

Hello, my name is David LaRocca, and I am the audit manager for the Sands Brothers Venture Capital Funds & The Genesis Funds. Attached please find the investment confirmations for the year ended December 31, 2012. If you could please complete the attached confirmations and return them to me directly either via scan& email, fax or to the address listed below I would greatly appreciate it.

Thank you.


David.

David P. LaRocca, CPA

Cornick Garber Sandler

Certified Public Accountants & Advisors



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Genesis Merchant Partners, LP



December 31, 2012

James Hunter
Trinity Cable



Re: Trinity Cable

Dear: James Hunter

In connection with the audit of the financial statements of Genesis Merchant Partners, LP as of December 31, 2012 and for the year ended, please confirm to our independent auditors, Cornick Garber and Sandler, 825 Third Avenue, New York, NY 10022 the information below:

Form of <u>Investment</u> held by the Genesis Merchant Partners, LP as of December 31, 2012	LOAN
Were any of the terms of the investment been <u>renegotiated</u> during 2012, if yes please explain?	NO
Were any <u>interest payments</u> been waived or forgiven during 2012, if yes for what dates and amounts?	NO
The <u>principal amount</u> of the initial investment	\$2,491,429
List Additional Investments with the fund, if applicable	N / A
The <u>date of the investment</u> made by Genesis Merchant Partners, LP, LP on the investment listed above	09/21/2011
The <u>date of the maturity of the investment</u> made by Genesis Merchant Partners, LP	NOT NAMED
The amount of the investment balance made by Genesis Merchant Partners, LP at December 31, 2012	\$2,491,429
The <u>amount of interest paid</u> during 2012 to Genesis Merchant Partners, LP	\$0
The <u>amount of interest payable</u> to Genesis Merchant Partners, LP at December 31, 2012	NOTHING BOOKED
The <u>interest rate of the investment</u>	\$2MIL @ 10%; \$492,429 @ 12%
The <u>amount of principal paid</u> during 2012 -	\$1
Were any principal payments waived or not paid during 2012, if any amount and date and reason not paid?	NO
The <u>repayment terms</u> of the investment	
<u>Collateral</u> related to the investment and value as of December 31, 2012	

15 Valley Drive, Greenwich, CT 06831 (203) 661-7500 t (203) 661-6500 f

Genesis Merchant Partners, LP



Options held by Genesis Merchant Partners, LP at December 31, 2012 and value (number of shares, par value, exercise price, terms)	
Has Genesis Merchant Partners, LP made any <u>guarantees</u> for the benefit of your company?	
<u>Other Comments:</u>	

Your prompt attention to this request will be appreciated. A self-addressed stamped envelope is enclosed for your reply. In addition to mailing please fax a copy of the confirmation response directly to our auditors at 212-557-3936, attention Leonard Weinstock.

Sincerely,

Christopher Kelly

CONFIRMATION:

The information above is complete and accurate as of the date indicated, except as described below:

By: _____

Title: _____

Date: _____

Exceptions:

Sands Brothers Venture Capital II LLC

[REDACTED]
[REDACTED]
[REDACTED]

December 31, 2012

James Hunter
Trinity Cable

[REDACTED]

To whom it may concern:

Cornick, Garber & Sandler, LLP, certified public accountants, [REDACTED]
[REDACTED] are auditing our financial statements as of
December 31, 2012.

For purposes of independent verification only please confirm our
investment in your securities.

Number of Shares/Principal Amount \$149,395

Class of Shares COMMON

Convertible Features _____

Other Attributes _____

Date of Investment 09/21/2012

Amount of Investment \$149,395

Company Name _____ Signed By _____ Title _____

Your prompt response in the enclosed prepaid envelope will be greatly
appreciated.

Sincerely,


Christopher Kelly

SEC-CGS-E-0033363

SEC-NY8127-000097930

Sands Brothers Venture Capital III LLC

[REDACTED]

December 31, 2012

[REDACTED]

Cornick, Garber & [REDACTED] dler, LLP, certified public accountants, [REDACTED]
[REDACTED], are auditing our financial statements as of
December 31, 2012.

For purposes of independent verification only please confirm our investment in your securities.

Number of Shares/Principal Amount \$1,259,579

Class of Shares COMMON

Convertible Features _____

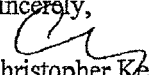
Other Attributes _____

Date of Investment 09/21/2011

Amount of Investment \$1,259,579

Company Name _____ Signed By _____ Title _____

Your prompt response in the enclosed prepaid envelope will be greatly appreciated.

Sincerely,

Christopher Kelly

Sands Brothers Venture Capital IV LLC

[REDACTED]

December 31, 2012

[REDACTED]

[REDACTED]

Cornick, Garber & Sandler, LLP, certified public accountants, [REDACTED] are auditing our financial statements as of December 31, 2012.

For purposes of independent verification only please confirm our investment in your securities.

Number of Shares/Principal Amount \$99,597

Class of Shares COMMON

Convertible Features _____

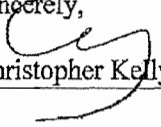
Other Attributes _____

Date of Investment 09/21/2011

Amount of Investment \$99,597

Company Name _____ Signed By _____ Title _____

Your prompt response in the enclosed prepaid envelope will be greatly appreciated.

Sincerely,

Christopher Kelly

From: Salvatore Vicari
Sent: Monday, April 09, 2012 11:24 AM
To: 'Gavin Watson'; Douglas J. Bisio
Subject: RE: MD Fragrance

Any chance we can get a draft or internal financials prior to May 1.....that date may be too late to get comfortable with the valuation.

Sal

From: Gavin Watson [REDACTED]
Sent: Monday, April 09, 2012 11:17 AM
To: Douglas J. Bisio
Subject: RE: MD Fragrance

They are supposedly getting them ready this month and they should be available on 5/1. Those will be 2011 full-year financials.

Gavin Watson
Sands Brothers Asset Management, LLC
[REDACTED]
[REDACTED]
[REDACTED]

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investment objectives will be achieved. Any decision to invest in a Fund should be made after reviewing the OM, conducting such investigations as the investor deems necessary and consulting the investor's own investment, legal, accounting, and tax advisors in order to make an independent determination of the suitability and consequences of an investment in a Fund.

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From: Douglas J. Bisio [REDACTED]
Sent: Monday, April 09, 2012 11:16 AM
To: Gavin Watson
Subject: FW: MD Fragrance

Gavin - I thought I heard you say the financials will be ready by the end of the month? Please confirm, also is this for the 12/31/11 financials?

Douglas J. Bisio
President
Greenwich Fund Services
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Please remember the environment before printing this email.



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From: Salvatore Vicari [mailto:svicari@cgscpa.com]
Sent: Saturday, April 07, 2012 3:43 PM
To: Douglas J. Bisio
Subject: MD Fragrance

Doug-

Any update on the financials from MD?

Sal


Salvatore Vicari, CPA

Cornick Garber Sandler

Certified Public Accountants & Advisors



  [Twitter](#) | [LinkedIn](#)

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From: Gavin Watson [REDACTED]
Sent: Wednesday, June 13, 2012 10:13 AM
To: Salvatore Vicari; David LaRocca
Subject: MD Surprise
Attachments: 20120604 AR Report MD.PDF; INVENTORY 05.31.2012.xlsx

See attached AR aging report and inventory report. Let's discuss this as well on our conversation this afternoon. Let me know what time you would like to do it. 2pm or later works best for me. Thanks.

Gavin Watson
Sands Brothers Asset Management, LLC

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

601 Lexington Avenue, 51st Floor
New York, NY 10022

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From: Gavin Watson [REDACTED]
Sent: Friday, May 03, 2013 12:08 PM
To: Salvatore Vicari; David LaRocca
Cc: Jeff Umansky; Douglas Bisio; John Lanser; Christopher Kelly
Subject: MD

Sal/David,

The dropbox has been updated with the photos of the MD storefronts and main warehouse/storefront. Let me know if this closes that one out.

O2HR will be completed within the next few hours. Nascent/Nery's we are waiting on deposition docs and will hopefully have those today as well.

Progressive is in progress. I have spoken to the Cantor folks and they will hopefully have a valuation on the portfolio to us by next week.

Gavin Watson
Portfolio Manager
Sands Brothers Asset Management, LLC

[REDACTED]

[REDACTED]

<p style="text-align: right;">Page 1</p> <p>UNITED STATES SECURITIES AND EXCHANGE COMMISSION</p> <p>In the Matter of:)</p> <p>SANDS BROTHERS ASSET MANAGEMENT LLC) AP File No. 3-16223</p> <p>STEVEN SANDS, MARTIN SANDS</p> <p>PAGES: 1 through 12</p> <p>PLACE: Securities and Exchange Commission</p> <p style="padding-left: 40px;">New York Regional Office</p> <p style="padding-left: 40px;">Brookfield Place</p> <p style="padding-left: 40px;">200 Vesey Street</p> <p style="padding-left: 40px;">New York, New York 10281-1022</p> <p>DATE: Tuesday, December 2, 2014</p> <p>The above-entitled matter came on for investigation, pursuant to notice, at 9:31 a.m.</p>	<p style="text-align: right;">Page 3</p> <p style="text-align: center;">P R O C E E D I N G S</p> <p>JUDGE ELLIOT: Let's go on the record. We're here in the matter of Sands Brothers Asset Management LLC, Steven Sands, Martin Sands and Christopher Kelly, Securities and Exchange Commission administrative proceeding, file number 3-16223. My name is Cameron Elliot presiding as Administrative Law Judge. May I have appearances from counsel, please.</p> <p>MS. BROWN: Yes, Nancy Brown and Janna Berke for the Division of Enforcement.</p> <p>MR. KAPLAN: Martin Kaplan and Robyn Paster for the Respondents excluding Mr. Kelly.</p> <p>MS. BROWN: Your Honor, we have been in contact with Mr. Kelly and we told him that in light of Your Honor's order yesterday he did not need to participate, however I have his phone number and can certainly tie him in if the Court thinks that's appropriate.</p> <p>JUDGE ELLIOT: Very well, I don't expect him to be here. This is our first pre-hearing conference and the main issue we need to address is the pre-hearing schedule. Before I get to that though let me address a couple issues.</p> <p>First of all, it appears to me from the returned certified mail cards that the service date, that</p>
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2 CAMERON ELLIOT, JUDGE</p> <p>3 On behalf of the Securities and Exchange Commission:</p> <p>4 NANCY BROWN, ESQ.</p> <p>5 JANNA BERKE, ESQ.</p> <p>6 Securities and Exchange Commission</p> <p>7 Division of Enforcement</p> <p>8 200 Vesey Street</p> <p>9 New York, New York 10281-1022</p> <p>10</p> <p>11 On behalf of the Respondents:</p> <p>12 MARTIN KAPLAN, ESQ.</p> <p>13 ROBYN PASTER, ESQ.</p> <p>14 Gusrae, Kaplan, Nusbaum, PLLC</p> <p>15 120 Wall Street</p> <p>16 New York, New York</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 is the date of receipt of the OIP or the date that the OIP</p> <p>2 was signed for was November 3rd but I see the Division</p> <p>3 represented in the motion to adjourn the hearing that the</p> <p>4 service date was October 29. What makes you think it was</p> <p>5 October 29, Ms. Brown?</p> <p>6 MS. BROWN: Your Honor, that was simply the</p> <p>7 date that the OIP was instituted, so the date of service,</p> <p>8 I mean that's when the actual OIP was sent out but the</p> <p>9 Court is correct of course that the green card governs and</p> <p>10 the green card would sit at the November 3rd and November</p> <p>11 5th.</p> <p>12 JUDGE ELLIOT: Very well, all right. So the</p> <p>13 service date will be November 3rd and I will calculate the</p> <p>14 due date for my initial decision on that basis.</p> <p>15 Now I see that the Respondents except for Mr.</p> <p>16 Kelly have filed an answer, I also see in the motion to</p> <p>17 adjourn that the Division has made the investigative file</p> <p>18 available.</p> <p>19 All right, so now we have to figure out the</p> <p>20 pre-hearing schedule. Let me start with this and I'll</p> <p>21 direct this to Ms. Brown first. How long do you think the</p> <p>22 hearing would last in this case or how long do you think</p> <p>23 your case in chief would last, leave it that way?</p> <p>24 MS. BROWN: Your Honor, no more than five</p> <p>25 days.</p>

Page 5

1 JUDGE ELLIOT: I notice that the charge or
 2 charges I guess, the alleged violations are not scienter
 3 based, that is they don't require proof of scienter. Mr.
 4 Kaplan, do you agree with that?
 5 MR. KAPLAN: Yes, I do although I think the
 6 mental state of the Respondents and how it occurred will
 7 be very relevant to the proceeding.
 8 JUDGE ELLIOT: Well that may be, I don't doubt
 9 that but the reason I mention this is because I'm
 10 considering in essence bifurcating the case in the
 11 following way. First, we would have a round of
 12 dispositive motions and this would be -- I would expect
 13 anyway that if I were to resolve anything it might resolve
 14 the question of liability, it might not resolve the
 15 question of liability but I would not necessarily expect
 16 that it would resolve the question of sanctions if I were
 17 to get to the point of sanctions. So we might have to
 18 have a hearing in any event but I think that given the
 19 fact that the charges are not scienter based that it might
 20 be a way of streamlining the case and shortening the
 21 hearing if we were to have a round of dispositive motions
 22 first and then have a hearing. So let me first ask the
 23 Division what are your views on that?
 24 MS. BROWN: That's totally in line with our
 25 views, Your Honor, I was going to raise that with respect

Page 6

1 to the entity. Because it's not a scienter based
 2 violation we think that it would be a fairly simple matter
 3 to establish for summary disposition the entity's
 4 violation of the custody rule.
 5 JUDGE ELLIOT: I'm not sure that I see the
 6 distinction between the entity and the individuals since
 7 the entity only acts through the individual officers but
 8 in any event, all right, I understand your position. Mr.
 9 Kaplan, what are your views?
 10 MR. KAPLAN: I think that an orderly way of
 11 proceeding and I understand your proposal, I think it's
 12 sound.
 13 JUDGE ELLIOT: Very well. So let's see, I'm
 14 thinking that given the upcoming holidays that we should
 15 probably have briefs due in the middle of January. So let
 16 me look at my calendar.
 17 (pause)
 18 JUDGE ELLIOT: Let me throw out the following
 19 schedule as a possibility. Motions for summary
 20 disposition would be due Friday, January 16. I'll give
 21 you three weeks for an opposition, so that would be
 22 oppositions due Friday, February 6, and then reply briefs
 23 would be due Monday -- no, Monday, February 16th is
 24 Presidents Day, so let's say Tuesday, February 17th. Any
 25 objection to that schedule? Ms. Brown?

Page 7

1 MS. BROWN: None, Your Honor.
 2 JUDGE ELLIOT: Mr. Kaplan?
 3 MS. BROWN: No, sir.
 4 JUDGE ELLIOT: Let's do that and I will not
 5 set a date for any future hearing, I want to see the
 6 parties briefs first and if it turns out that we need a
 7 hearing, then we'll just hold another pre-hearing
 8 conference and we'll set the hearing date then.
 9 Let me ask you another question. It looks to
 10 me and maybe I'm wrong, it looks to me like one of the
 11 individual Respondents is in Long Island and one is in
 12 Greenwich. Mr. Kaplan, is that right?
 13 MR. KAPLAN: That is correct.
 14 MS. BROWN: Where would you suggest we hold
 15 the hearing?
 16 MR. KAPLAN: In Manhattan.
 17 JUDGE ELLIOT: Very good. I assume that's
 18 acceptable to you, Ms. Brown.
 19 MS. BROWN: Yes, Your Honor.
 20 JUDGE ELLIOT: Any hearing we do hold will be
 21 in Manhattan. Now, Mr. Kaplan, if you would like to file
 22 your own motion for summary disposition, that's fine but
 23 I'll hold you to the same schedule as the Division. The
 24 Division of course will have to because they have the
 25 burden of proof. You don't need to make this decision

Page 8

1 now, Mr. Kaplan, you can decide whether you want to do
 2 that later but if you do file a cross motion, then you
 3 have the same schedule that the Division does.
 4 MR. KAPLAN: Thank you, Judge.
 5 JUDGE ELLIOT: I encourage the parties to
 6 serve each other with filings electronically. Of course
 7 you'll have to file hard copies with the secretary but if
 8 you want to send me a courtesy copy, you can send it to me
 9 electronically at our e-mail box, alj@sec.gov.
 10 Now I think that's it on my part, I don't have
 11 anything more to discuss. Ms. Brown, is there anything
 12 else we need to talk about?
 13 MS. BROWN: Yes, Your Honor, I just want to
 14 raise an issue. I've already raised it with Mr. Kaplan,
 15 hopefully we can resolve it but it's important I think
 16 that the Court have an early warning that this issue is
 17 brewing because it effects potentially the integrity of
 18 the proceeding. So I want to make sure it's on the record
 19 and has been at least raised.
 20 Mr. Kaplan represented in the investigation
 21 both Mr. Kelly who as Your Honor is aware has submitted an
 22 offer of settlement for the Commission's consideration as
 23 well as the remaining Respondents, Sands Brothers Asset
 24 Management and Steven Sands and Martin Sands. So as a
 25 result there may be because of that dual representation

Page 9

1 some issues of conflict that may permeate these
 2 proceedings, particularly if Mr. Kelly were to be called
 3 as a witness.
 4 So as I say, Mr. Kaplan and I have been
 5 discussing this issue, we will continue to discuss it and
 6 I will return to the Court as appropriate should our
 7 discussions not produce a satisfactory resolution.
 8 JUDGE ELLIOT: Very well. Mr. Kaplan,
 9 anything else we need to talk about?
 10 MR. KAPLAN: I'm not going to comment on the
 11 staff's statement, I'll wait. No, I have nothing else.
 12 Your Honor.
 13 JUDGE ELLIOT: All right, very well. Counsel,
 14 thank you very much. This matter is adjourned.
 15 (Whereupon, at 9:41 a.m., the pre-hearing
 16 conference was adjourned.)
 17 *****
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Page 11

1
 2
 3
 4 RECORDER'S CERTIFICATE
 5
 6 I, Nicole Pino, recorder, hereby certify that the
 7 foregoing transcript of 12 pages is a complete, true, and
 8 accurate transcript of the testimony indicated, held on
 9 December 2, 2014, at 200 Vesey Street, Suite 400, New
 10 York, New York, in the matter of:
 11 Sands Brothers Asset Management, LLC
 12 Steven Sands, Martin Sands
 13 I further certify that this proceeding was recorded
 14 by me and that the foregoing transcript was prepared under
 15 my direction.
 16 Date: _____, 2014
 17 Official Reporter: _____
 18
 19
 20
 21
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 24
 25

Page 10

1 CERTIFICATE
 2 I, Peggy Miller, hereby certify that the
 3 foregoing transcript consisting of 12 pages is a complete,
 4 true and accurate transcript of the pre-hearing
 5 conference, held on Tuesday, December 2, 2014, at 200
 6 Vesey Street, New York, New York, in The Matter of Sands
 7 Brothers Asset Management, LLC, Steven Sands, Martin
 8 Sands, File No. 3-16223. I further certify that this
 9 proceeding was recorded by Nicole Pino and that the
 10 foregoing transcript has been typed and proofread by me.
 11
 12
 13
 14 _____
 15 Typist/Proofreader Date
 16
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Page 12

1
 2
 3
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 5 PROOFREADER'S CERTIFICATE
 6
 7 In the Matter of: Sands Brothers Asset Management, LLC
 8 Steven Sands, Martin Sands
 9 File Number: AP 3-16223
 10 Date: December 2, 2014
 11 Location: 200 Vesey Street, Suite 400
 12 New York, New York
 13
 14 This is to certify that I, Peggy Miller, the
 15 undersigned, do hereby swear and affirm that the attached
 16 proceedings before the United States Securities and
 17 Exchange Commission were held according to the record and
 18 that this is the original, complete, true, and accurate
 19 transcript that has been compared to the reporting or
 20 recording accomplished at the hearing.
 21
 22 _____
 23 Proofreader Date
 24
 25

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)

) File No. NY-08127

SBAM VENTURE)

CAPITAL FUNDS)

WITNESS: CHRISTOPHER KELLY

PAGES: 1-59

PLACE: Securities and Exchange Commission
Three World Financial Center - Suite 4300
New York, New York 10281

DATE: April 22, 2013

The above-entitled matter came on for
hearing at 10:09 o'clock a.m.

Page 5

1 Q. If at any point you need a break to stretch
 2 your limbs, just let me know and I will take a break.
 3 A. Okay.
 4 Q. Mr. Kelly, could you please state and spell
 5 your full name for the record.
 6 A. Christopher Kelly, C-H-R-I-S-T-O-P-H-E-R
 7 K-E-L-L-Y.
 8 Q. Do you have a middle initial?
 9 A. R, as in Robert. The initial R.
 10 Q. And your middle name is?
 11 A. Raymond, R-A-Y-M-O-N-D.
 12 Q. My name is William Edwards. I am a attorney
 13 with the Enforcement Division OF the U.S. Securities and
 14 Exchange Commission. I am an officer for the purposes of
 15 today's proceeding.
 16 With me is Wendy Tepperman who is also an
 17 attorney with the Enforcement Division of the U.S.
 18 Securities and Exchange Commission, and she, too, is an
 19 officer of the Commission for the purposes of this
 20 proceeding.
 21 This is an investigation by the Securities
 22 and Exchange Commission captioned "Sands Brothers Asset
 23 Management Venture Capital Funds," NY-08127. The purpose
 24 of the investigation is to determine whether there have
 25 been violations of certain provisions of the Federal

Page 6

1 Securities Laws. However, the facts developed in this
 2 investigation might constitute violations of other federal
 3 or state, civil or criminal laws.
 4 Mr. Kelly, prior to opening the record today
 5 I showed you a copy the Formal Order of Investigation;
 6 correct?
 7 A. Yes.
 8 Q. Do you have any questions about this
 9 document?
 10 A. No.
 11 Q. Also, before opening the record this morning,
 12 I showed you a copy of a document that was previously
 13 marked as Exhibit 1, which is SEC Form 1662. Mr. Kelly,
 14 do you have any questions about this document?
 15 A. No.
 16 Q. Great.
 17 Mr. Kelly, are you represented by counsel
 18 here today?
 19 A. Yes.
 20 MR. EDWARDS: Would counsel please identify
 21 themselves?
 22 MR. KAPLAN: Certainly. Martin H. Kaplan,
 23 Gusrae Kaplan & Nusbaum PLLC, 120 Wall Street, New York
 24 New York 10005.
 25 To my left is my associate, Robyn Paster.

Page 7

1 Q. Mr. Kelly, what is your date of birth?
 2 A. 10/27/57.
 3 Q. And do you have a personal e-mail address?
 4 A. Yes.
 5 Q. And what is that e-mail address?
 6 A. CRKPrime@Yahoo.com.
 7 Q. Do you have a professional e-mail address?
 8 A. Yes.
 9 Q. And what is that address?
 10 A. CKelly@SandsBrothers.com.
 11 Q. Mr. Kelly, would you briefly describe your
 12 post high school educational history?
 13 A. I sometimes use another e-mail address.
 14 Q. Please.
 15 A. CKelly@CYPRS.com.
 16 Q. Again, could you please describe your post
 17 high school educational history?
 18 A. College and law school.
 19 Q. And where did you attend college?
 20 A. The University of Virginia.
 21 Q. And law school?
 22 A. The University of Virginia School of Law.
 23 Q. Have you ever held any securities licenses?
 24 A. A 7.
 25 Q. A Series 7?

Page 8

1 A. Yes.
 2 Q. And any others?
 3 A. No.
 4 Q. Are you a CPA?
 5 A. No.
 6 Q. And, Mr. Kelly, where are you currently
 7 employed?
 8 A. Sands Brothers Asset Management.
 9 Q. How long have you been at SBAM?
 10 A. Approximately five years.
 11 Q. So that would mean that you started working
 12 at SBAM in 2008?
 13 A. Yes.
 14 Q. Do you remember the month by chance?
 15 A. April.
 16 Q. Of 2008.
 17 And if you could, just take me through the
 18 different jobs you've had at SBAM since you started in
 19 April of 2008.
 20 A. Chief Operating Officer and Chief Compliance
 21 Officer.
 22 Q. And have you had those two titles since you
 23 began working at Sands Brothers in April of 2008?
 24 A. Yes.
 25 Q. Do you currently have those two titles?

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Supplemental Information for Persons Requested to Supply
Information Voluntarily or Directed to Supply Information
Pursuant to a Commission Subpoena

A. False Statements and Documents

Section 1001 of Title 18 of the United States Code provides as follows:

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined under this title or imprisoned not more than five years, or both.

B. Testimony

If your testimony is taken, you should be aware of the following:

1. *Record.* Your testimony will be transcribed by a reporter. If you desire to go off the record, please indicate this to the Commission employee taking your testimony, who will determine whether to grant your request. The reporter ~~will not go off the record at your, or your counsel's, direction.~~
2. *Counsel.* You have the right to be accompanied, represented and advised by counsel of your choice. Your counsel may advise you before, during and after your testimony; question you briefly at the conclusion of your testimony to clarify any of the answers you give during testimony; and make summary notes during your testimony solely for your use. If you are accompanied by counsel, you may consult privately.

If you are not accompanied by counsel, please advise the Commission employee taking your testimony whenever during your testimony you desire to be accompanied, represented and advised by counsel. Your testimony will be ~~adjourned to afford you the opportunity to arrange to do so.~~

You may be represented by counsel who also represents other persons involved in the Commission's investigation. This multiple representation, however, presents a potential conflict of interest if one client's interests are or may be adverse to another's. If you are represented by counsel who also represents other persons involved in the investigation, the Commission will assume that you and counsel have discussed and resolved all issues concerning possible conflicts of interest. The choice of counsel, and the responsibility for that choice, is yours.

3. *Transcript Availability.* Rule 6 of the Commission's Rules Relating to Investigations, 17 CFR 203.6, states:

~~A person who has submitted documentary evidence or testimony in a formal investigative proceeding shall be entitled, upon written request, to procure a copy of his documentary evidence or a transcript of his testimony on payment of the appropriate fees: *Provided, however,* That in a nonpublic formal investigative proceeding the Commission may for good cause deny such request. In any event, any witness, upon proper identification, shall have the right to inspect the official transcript of the witness' own testimony.~~

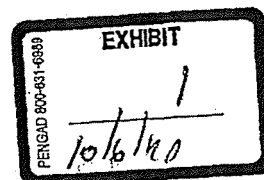
If you wish to purchase a copy of the transcript of your testimony, the reporter will provide you with a copy of the appropriate form. Persons requested to supply information voluntarily will be allowed the rights provided by this rule.

4. *Perjury.* Section 1621 of Title 18 of the United States Code provides as follows:

~~Whoever . . . having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly . . . willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true . . . is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years or both . . .~~

5. *Fifth Amendment and Voluntary Testimony.* Information you give may be used against you in any federal, state, local or foreign administrative, civil or criminal proceeding brought by the Commission or any other agency.

SEC 1662 (03-10)



You may refuse, in accordance with the rights guaranteed to you by the Fifth Amendment to the Constitution of the United States, to give any information that may tend to incriminate you or subject you to fine, penalty or forfeiture.

If your testimony is not pursuant to subpoena, your appearance to testify is voluntary, you need not answer any question, and you may leave whenever you wish. Your cooperation is, however, appreciated.

6. *Formal Order Availability.* If the Commission has issued a formal order of investigation, it will be shown to you during your testimony, at your request. If you desire a copy of the formal order, please make your request in writing.

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Rule 5(c) of the Commission's Rules on Informal and Other Procedures, 17 CFR 202.5(c), states:

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The staff of the Commission routinely seeks to introduce submissions made pursuant to Rule 5(c) as evidence in Commission enforcement proceedings, when the staff deems appropriate.

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D. Freedom of Information Act

The Freedom of Information Act, 5 U.S.C. 552 (the "FOIA"), generally provides for disclosure of information to the public. Rule 83 of the Commission's Rules on Information and Requests, 17 CFR 200.83, provides a procedure by which a person can make a written request that information submitted to the Commission not be disclosed under the FOIA. That rule states that no determination as to the validity of such a request will be made until a request for disclosure of the information under the FOIA is received. Accordingly, no response to a request that information not be disclosed under the FOIA is necessary or will be given until a request for disclosure under the FOIA is received. If you desire an acknowledgment of receipt of your written request that information not be disclosed under the FOIA, please provide a duplicate request, together with a stamped, self addressed envelope.

E. Authority for Solicitation of Information

Persons Directed to Supply Information Pursuant to Subpoena. The authority for requiring production of information is set forth in the subpoena. Disclosure of the information to the Commission is mandatory, subject to the valid assertion of any legal right or privilege you might have.

Persons Requested to Supply Information Voluntarily. One or more of the following provisions authorizes the Commission to solicit the information requested: Sections 19 and/or 20 of the Securities Act of 1933; Section 21 of the Securities Exchange Act of 1934; Section 321 of the Trust Indenture Act of 1939; Section 42 of the Investment

Company Act of 1940; Section 209 of the Investment Advisers Act of 1940; and 17 CFR 202.5. Disclosure of the requested information to the Commission is voluntary on your part.

F. Effect of Not Supplying Information

Persons Directed to Supply Information Pursuant to Subpoena. If you fail to comply with the subpoena, the Commission may seek a court order requiring you to do so. If such an order is obtained and you thereafter fail to supply the information, you may be subject to civil and/or criminal sanctions for contempt of court. In addition, if the subpoena was issued pursuant to the Securities Exchange Act of 1934, the Investment Company Act of 1940, and/or the Investment Advisers Act of 1940, and if you, without just cause, fail or refuse to attend and testify, or to answer any lawful inquiry, or to produce books, papers, correspondence, memoranda, and other records in compliance with the subpoena, you may be found guilty of a misdemeanor and fined not more than \$1,000 or imprisoned for a term of not more than one year, or both.

Persons Requested to Supply Information Voluntarily. There are no direct sanctions and thus no direct effects for failing to provide all or any part of the requested information.

G. Principal Uses of Information

The Commission's principal purpose in soliciting the information is to gather facts in order to determine whether any person has violated, is violating, or is about to violate any provision of the federal securities laws or rules for which the Commission has enforcement authority, such as rules of securities exchanges and the rules of the Municipal Securities Rulemaking Board. Facts developed may, however, constitute violations of other laws or rules. Information provided may be used in Commission and other agency enforcement proceedings. Unless the Commission or its staff explicitly agrees to the contrary in writing, you should not assume that the Commission or its staff acquiesces in, accedes to, or concurs or agrees with, any position, condition, request, reservation of right, understanding, or any other statement that purports, or may be deemed, to be or to reflect a limitation upon the Commission's receipt, use, disposition, transfer, or retention, in accordance with applicable law, of information provided.

H. Routine Uses of Information

The Commission often makes its files available to other governmental agencies, particularly United States Attorneys and state prosecutors. There is a likelihood that information supplied by you will be made available to such agencies where appropriate. Whether or not the Commission makes its files available to other governmental agencies is, in general, a confidential matter between the Commission and such other governmental agencies.

Set forth below is a list of the routine uses which may be made of the information furnished.

1. To coordinate law enforcement activities between the SEC and other federal, state, local or foreign law enforcement agencies, securities self regulatory organizations, and foreign securities authorities.
2. By SEC personnel for purposes of investigating possible violations of, or to conduct investigations authorized by, the federal securities laws.
3. Where there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether federal, state, or local, a foreign governmental authority or foreign securities authority, or a securities self-regulatory organization charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.
4. In any proceeding where the federal securities laws are in issue or in which the Commission, or past or present members of its staff, is a party or otherwise involved in an official capacity.
5. To a federal, state, local or foreign governmental authority or foreign securities authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.
6. To a federal, state, local or foreign governmental authority or foreign securities authority, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

7. In connection with proceedings by the Commission pursuant to Rule 102(e) of its Rules of Practice, 17 CFR 201.102(e).

8. When considered appropriate, records in this system may be disclosed to a bar association, the American Institute of Certified Public Accountants, a state accountancy board or other federal, state, local or foreign licensing or oversight authority, foreign securities authority, or professional association or self regulatory authority performing similar functions, for possible disciplinary or other action.

9. In connection with investigations or disciplinary proceedings by a state securities regulatory authority, a foreign securities authority, or by a self regulatory organization involving one or more of its members.

10. As a data source for management information for production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained or for related personnel management functions or manpower studies, and to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act or to locate specific individuals for personnel research or other personnel management functions.

11. In connection with their regulatory and enforcement responsibilities mandated by the federal securities laws (as defined in Section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), or state or foreign laws regulating securities or other related matters, records may be disclosed to national securities associations that are registered with the Commission, the Municipal Securities Rulemaking Board, the Securities Investor Protection Corporation, the federal banking authorities, including but not limited to, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation, state securities regulatory or law enforcement agencies or organizations, or regulatory law enforcement agencies of a foreign government, or foreign securities authority.

12. To any trustee, receiver, master, special counsel, or other individual or entity that is appointed by a court of competent jurisdiction or as a result of an agreement between the parties in connection with litigation or administrative proceedings involving allegations of violations of the federal securities laws (as defined in Section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)) or the Commission's Rules of Practice, 17 CFR 201.100 - 900, or otherwise, where such trustee, receiver, master, special counsel or other individual or entity is specifically designated to perform particular functions with respect to, or as a result of, the pending action or proceeding or in connection with the administration and enforcement by the Commission of the federal securities laws or the Commission's Rules of Practice.

13. To any persons during the course of any inquiry or investigation conducted by the Commission's staff, or in connection with civil litigation, if the staff has reason to believe that the person to whom the record is disclosed may have further information about the matters related therein, and those matters appeared to be relevant at the time to the subject matter of the inquiry.

14. To any person with whom the Commission contracts to reproduce, by typing, photocopy or other means, any record within this system for use by the Commission and its staff in connection with their official duties or to any person who is utilized by the Commission to perform clerical or stenographic functions relating to the official business of the Commission.

15. Inclusion in reports published by the Commission pursuant to authority granted in the federal securities laws (as defined in Section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)).

16. To members of advisory committees that are created by the Commission or by the Congress to render advice and recommendations to the Commission or to the Congress, to be used solely in connection with their official designated functions.

17. To any person who is or has agreed to be subject to the Commission's Rules of Conduct, 17 CFR 200.735-1 to 735-18, and who assists in the investigation by the Commission of possible violations of federal securities laws (as defined in Section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), in the preparation or conduct of enforcement actions brought by the Commission for such violations, or otherwise in connection with the Commission's enforcement or regulatory functions under the federal securities laws.

18. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

19. To respond to inquiries from Members of Congress, the press and the public which relate to specific matters that the Commission has investigated and to matters under the Commission's jurisdiction.

20. To prepare and publish information relating to violations of the federal securities laws as provided in 15 U.S.C. 78u(a), as amended.

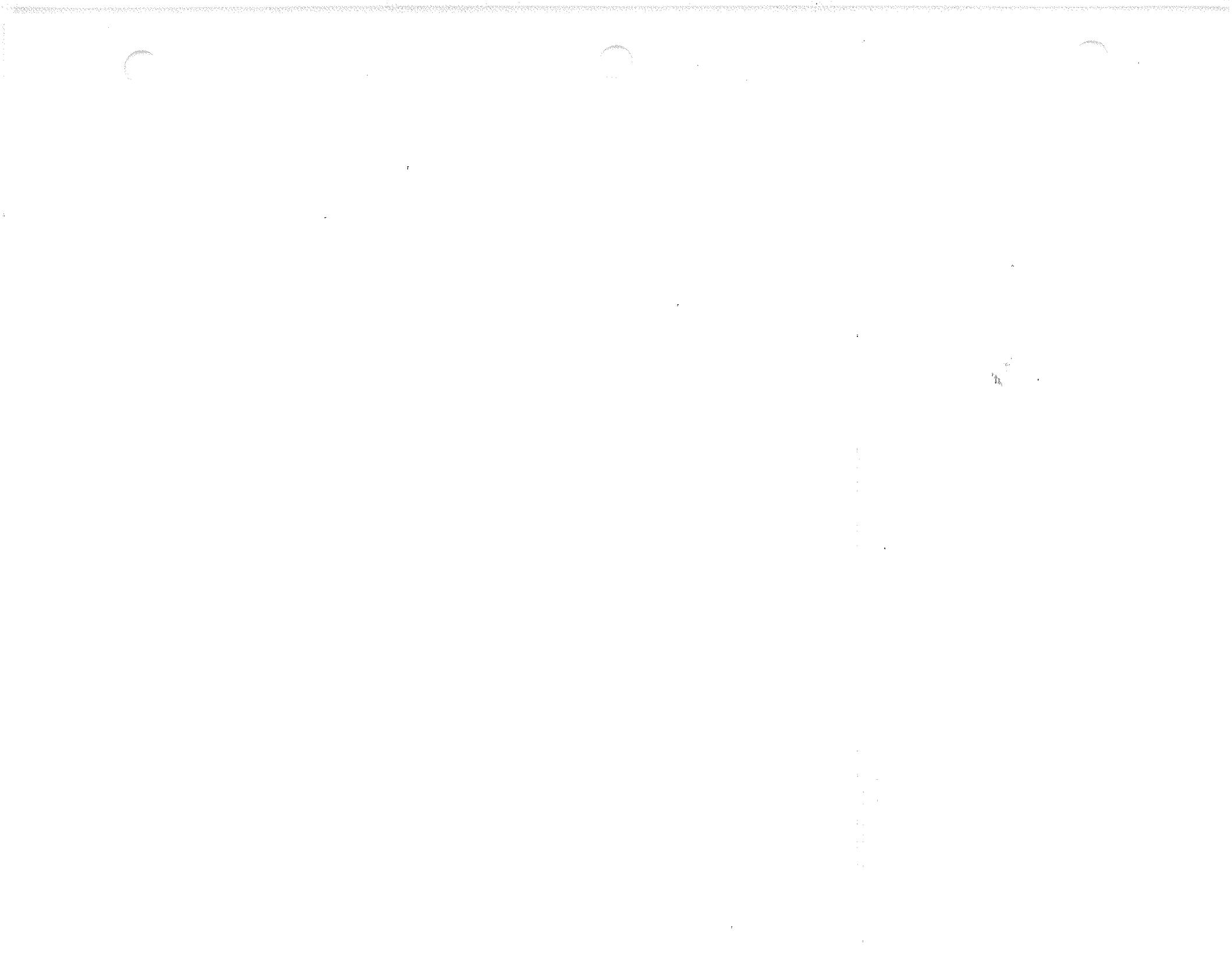
21. To respond to subpoenas in any litigation or other proceeding.

22. To a trustee in bankruptcy.

23. To any governmental agency, governmental or private collection agent, consumer reporting agency or commercial reporting agency, governmental or private employer of a debtor, or any other person, for collection, including collection by administrative offset, federal salary offset, tax refund offset, or administrative wage garnishment, of amounts owed as a result of Commission civil or administrative proceedings.

* * * * *

Small Business Owners: The SEC always welcomes comments on how it can better assist small businesses. If you have comments about the SEC's enforcement of the securities laws, please contact the Office of Chief Counsel in the SEC's Division of Enforcement at 202-551-4933 or the SEC's Small Business Ombudsman at 202-551-3460. If you would prefer to comment to someone outside of the SEC, you can contact the Small Business Regulatory Enforcement Ombudsman at <http://www.sba.gov/ombudsman> or toll free at 888-REG-FAIR. The Ombudsman's office receives comments from small businesses and annually evaluates federal agency enforcement activities for their responsiveness to the special needs of small business.









UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
NEW YORK REGIONAL OFFICE
3 WORLD FINANCIAL CENTER
SUITE 400
NEW YORK, NEW YORK 10281-1022

WRITER'S DIRECT LINE
(212) 336-0953
edwardsw@sec.gov

March 14, 2013

Via Email and Overnight Mail

Christopher Kelly
c/o Martin H. Kaplan, Esq.



Re: In the Matter of SBAM Venture Capital Funds (NY-08127)

Dear Mr. Kelly:

The staff of the Securities and Exchange Commission (the "Commission") is conducting an investigation into the above-referenced matter. The enclosed subpoena has been issued pursuant to a formal order of investigation entered by the Commission and requires you to appear for investigative testimony on **April 2, 2013**.

This investigation is non-public and should not be construed as an indication by the Commission or its staff that any violations of law have occurred, or as a reflection upon any person, entity, or security. Please note that, in any matter in which enforcement action is ultimately deemed to be warranted, the Division of Enforcement will not recommend any settlement unless the party wishing to settle certifies, under penalty of perjury, that all documents responsive to subpoenas and formal and informal document requests issued by the Commission or its staff in this matter have been produced. In addition, information provided is subject to the Commission's routine uses. A list of those uses is contained in the enclosed copy of SEC Form 1662, which also contains other important information. Please review SEC Form 1662 prior to providing any information responsive to this subpoena.

If you have any questions concerning the subpoena, please call me at (212) 336-0953.

Sincerely,

A handwritten signature in cursive script that reads "William Edwards".

William Edwards
Senior Attorney
Enforcement Division

Enclosures: Subpoena
SEC Form 1662

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

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The Commission's principal purpose in soliciting the information is to gather facts in order to determine whether any person has violated, is violating, or is about to violate any provision of the federal securities laws or rules for which the Commission has enforcement authority, such as rules of securities exchanges and the rules of the Municipal Securities Rulemaking Board. Facts developed may, however, constitute violations of other laws or rules. Information provided may be used in Commission and other agency enforcement proceedings. Unless the Commission or its staff explicitly agrees to the contrary in writing, you should not assume that the Commission or its staff acquiesces in, accedes to, or concurs or agrees with, any position, condition, request, reservation of right, understanding, or any other statement that purports, or may be deemed, to be or to reflect a limitation upon the Commission's receipt, use, disposition, transfer, or retention, in accordance with applicable law, of information provided.

H. Routine Uses of Information

The Commission often makes its files available to other governmental agencies, particularly United States Attorneys and state prosecutors. There is a likelihood that information supplied by you will be made available to such agencies where appropriate. Whether or not the Commission makes its files available to other governmental agencies is, in general, a confidential matter between the Commission and such other governmental agencies.

Set forth below is a list of the routine uses which may be made of the information furnished.

1. To appropriate agencies, entities, and persons when (a) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the SEC has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the SEC or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the SEC's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.
2. To other federal, state, local, or foreign law enforcement agencies; securities self-regulatory organizations; and foreign financial regulatory authorities to assist in or coordinate regulatory or law enforcement activities with the SEC.
3. To national securities exchanges and national securities associations that are registered with the SEC, the Municipal Securities Rulemaking Board; the Securities Investor Protection Corporation; the Public Company Accounting Oversight Board; the federal banking authorities, including, but not limited to, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation; state securities regulatory agencies or organizations; or regulatory authorities of a foreign government in connection with their regulatory or enforcement responsibilities.
4. By SEC personnel for purposes of investigating possible violations of, or to conduct investigations authorized by, the federal securities laws.
5. In any proceeding where the federal securities laws are in issue or in which the Commission, or past or present members of its staff, is a party or otherwise involved in an official capacity.
6. In connection with proceedings by the Commission pursuant to Rule 102(e) of its Rules of Practice, 17 CFR 201.102(e).

7. To a bar association, state accountancy board, or other federal, state, local, or foreign licensing or oversight authority; or professional association or self-regulatory authority to the extent that it performs similar functions (including the Public Company Accounting Oversight Board) for investigations or possible disciplinary action.
8. To a federal, state, local, tribal, foreign, or international agency, if necessary to obtain information relevant to the SEC's decision concerning the hiring or retention of an employee; the issuance of a security clearance; the letting of a contract; or the issuance of a license, grant, or other benefit.
9. To a federal, state, local, tribal, foreign, or international agency in response to its request for information concerning the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation of an employee; the letting of a contract; or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.
10. To produce summary descriptive statistics and analytical studies, as a data source for management information, in support of the function for which the records are collected and maintained or for related personnel management functions or manpower studies; may also be used to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act.
11. To any trustee, receiver, master, special counsel, or other individual or entity that is appointed by a court of competent jurisdiction, or as a result of an agreement between the parties in connection with litigation or administrative proceedings involving allegations of violations of the federal securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)) or pursuant to the Commission's Rules of Practice, 17 CFR 201.100 – 900 or the Commission's Rules of Fair Fund and Disgorgement Plans, 17 CFR 201.1100-1106, or otherwise, where such trustee, receiver, master, special counsel, or other individual or entity is specifically designated to perform particular functions with respect to, or as a result of, the pending action or proceeding or in connection with the administration and enforcement by the Commission of the federal securities laws or the Commission's Rules of Practice or the Rules of Fair Fund and Disgorgement Plans.
12. To any persons during the course of any inquiry, examination, or investigation conducted by the SEC's staff, or in connection with civil litigation, if the staff has reason to believe that the person to whom the record is disclosed may have further information about the matters related therein, and those matters appeared to be relevant at the time to the subject matter of the inquiry.
13. To interns, grantees, experts, contractors, and others who have been engaged by the Commission to assist in the performance of a service related to this system of records and who need access to the records for the purpose of assisting the Commission in the efficient administration of its programs, including by performing clerical, stenographic, or data analysis functions, or by reproduction of records by electronic or other means. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.
14. In reports published by the Commission pursuant to authority granted in the federal securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), which authority shall include, but not be limited to, section 21(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78u(a)).
15. To members of advisory committees that are created by the Commission or by Congress to render advice and recommendations to the Commission or to Congress, to be used solely in connection with their official designated functions.
16. To any person who is or has agreed to be subject to the Commission's Rules of Conduct, 17 CFR 200.735-1 to 200.735-18, and who assists in the investigation by the Commission of possible violations of the federal securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), in the preparation or conduct of enforcement actions brought by the Commission for such violations, or otherwise in connection with the Commission's enforcement or regulatory functions under the federal securities laws.
17. To a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.
18. To members of Congress, the press, and the public in response to inquiries relating to particular Registrants and their activities, and other matters under the Commission's jurisdiction.
19. To prepare and publish information relating to violations of the federal securities laws as provided in 15 U.S.C. 78c(a)(47)), as amended.
20. To respond to subpoenas in any litigation or other proceeding.

21. To a trustee in bankruptcy.

22. To any governmental agency, governmental or private collection agent, consumer reporting agency or commercial reporting agency, governmental or private employer of a debtor, or any other person, for collection, including collection by administrative offset, federal salary offset, tax refund offset, or administrative wage garnishment, of amounts owed as a result of Commission civil or administrative proceedings.

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Small Business Owners: The SEC always welcomes comments on how it can better assist small businesses. If you have comments about the SEC's enforcement of the securities laws, please contact the Office of Chief Counsel in the SEC's Division of Enforcement at 202-551-4933 or the SEC's Small Business Ombudsman at 202-551-3460. If you would prefer to comment to someone outside of the SEC, you can contact the Small Business Regulatory Enforcement Ombudsman at <http://www.sba.gov/ombudsman> or toll free at 888-REG-FAIR. The Ombudsman's office receives comments from small businesses and annually evaluates federal agency enforcement activities for their responsiveness to the special needs of small business.